### Human Rights in Bulgaria in 2022

**Abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>RA</td>
<td>Registry Agency</td>
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<tr>
<td>AEJ – Bulgaria</td>
<td>Association of European Journalists in Bulgaria – Bulgaria</td>
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<tr>
<td>SAA</td>
<td>Social Assistance Agency</td>
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<tr>
<td>ACSC</td>
<td>Administrative Court - Sofia-city</td>
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<tr>
<td>BNR</td>
<td>Bulgarian National Radio</td>
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<tr>
<td>BNT</td>
<td>Bulgarian National Television</td>
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<tr>
<td>BSP</td>
<td>Bulgarian Socialist Party</td>
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<td>BHC</td>
<td>Bulgarian Helsinki Committee</td>
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<td>SAC</td>
<td>Supreme Administrative Court</td>
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<td>PME</td>
<td>pieces of material evidence</td>
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<tr>
<td>SCPO</td>
<td>Supreme Cassation Prosecutor’s Office</td>
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<td>SCC</td>
<td>Supreme Court of Cassation</td>
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<tr>
<td>VMRO-BND</td>
<td>Internal Macedonian Revolutionary Organization – Bulgarian National Movement (VMRO-BND)</td>
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<tr>
<td>SJC</td>
<td>Supreme Judicial Council</td>
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<tr>
<td>CBS</td>
<td>Correctional Boarding School</td>
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<td>GDEP</td>
<td>General Directorate “Execution of Penalties”</td>
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<td>GERB</td>
<td>Citizens for European Development of Bulgaria</td>
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<td>SAR</td>
<td>State Agency for Refugees</td>
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<td>SACP</td>
<td>State Agency for Child Protection</td>
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<td>DB</td>
<td>Democratic Bulgaria</td>
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<tr>
<td>HMSCC</td>
<td>Home for Medical and Social Care for Children</td>
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<td>PTP</td>
<td>pre-trial proceeding</td>
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<tr>
<td>SPH</td>
<td>State Psychiatric Hospital</td>
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<td>DPS</td>
<td>Movement for Rights and Freedoms</td>
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<td>DRM</td>
<td>Society of Repressed Macedonians in Bulgaria, Victims of Communist Terror (DRM)</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>ECHR</td>
<td>European Court of Human Rights</td>
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<td>APIA</td>
<td>Access to Public Information Act</td>
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<tr>
<td>LPD</td>
<td>Law on Protection Against Discrimination</td>
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<tr>
<td>LPDV</td>
<td>Law on Protection from Domestic Violence</td>
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<tr>
<td>BALPDV</td>
<td>Bill Amending the Law on Protection from Domestic Violence</td>
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<tr>
<td>BACCP</td>
<td>Bill Amending the Code of Criminal Procedure</td>
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<tr>
<td>PD</td>
<td>Prison dormitory</td>
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<tr>
<td>OTPD</td>
<td>Open type prison dormitory</td>
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<td>SIMA</td>
<td>Special Intelligence Means Act</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>SSA</td>
<td>Social Services Act</td>
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<td>ARA</td>
<td>Asylum and Refugees Act</td>
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<td>ITN</td>
<td>There Is Such a People</td>
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<tr>
<td>CJE</td>
<td>Committee on Journalistic Ethics</td>
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<td>CPD</td>
<td>Commission for Protection against Discrimination</td>
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<tr>
<td>CMCE</td>
<td>Committee of Ministers of the Council of Europe</td>
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<td>CPT</td>
<td>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</td>
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<td>CCUAAFC</td>
<td>Commission for Combating Corruption and Confiscation of Illegally Acquired Assets</td>
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<tr>
<td>CRPD</td>
<td>UN Convention on the Rights of Persons with Disabilities</td>
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<td>CC</td>
<td>Constitutional Court</td>
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<tr>
<td>CCB</td>
<td>Corporate Commercial Bank</td>
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<tr>
<td>LGBTI</td>
<td>Lesbians, Gay, Bisexual, Transgender and Intersex people</td>
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<tr>
<td>MoI</td>
<td>Ministry of Interior</td>
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<tr>
<td>MH</td>
<td>Ministry of Health</td>
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<tr>
<td>MES</td>
<td>Ministry of Education and Science</td>
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<tr>
<td>MJ</td>
<td>Ministry of Justice</td>
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<tr>
<td>MRDPW</td>
<td>Ministry of Regional Development and Public Works</td>
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<tr>
<td>MLSP</td>
<td>Ministry of Labour and Social Policy</td>
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<tr>
<td>NBCSIM</td>
<td>National Bureau for Control of Special Intelligence Means</td>
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<tr>
<td>NHIF</td>
<td>National Health Insurance Fund</td>
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<tr>
<td>PC</td>
<td>Penal Code</td>
</tr>
<tr>
<td>NRCPA</td>
<td>National Register of Current and Permanent Addresses</td>
</tr>
<tr>
<td>CCP</td>
<td>Code of Criminal Procedure</td>
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<tr>
<td>HİTM</td>
<td>National preventive mechanisms</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<tr>
<td>NSI</td>
<td>National Statistical Institute</td>
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<tr>
<td>DČB</td>
<td>District Court – Blagoevgrad</td>
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<tr>
<td>OSCE</td>
<td>Organisation for Security and Cooperation in Europe</td>
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<tr>
<td>PP</td>
<td>We Continue the Changer</td>
</tr>
<tr>
<td>SCPT</td>
<td>Subcommittee on Prevention of Torture of the UN</td>
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<tr>
<td>CAC</td>
<td>Sofia Appellate Court</td>
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<tr>
<td>SHTAF</td>
<td>Special home for temporary accommodation of foreigners</td>
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<tr>
<td>UDF</td>
<td>Union of Democratic Forces</td>
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<tr>
<td>CEC</td>
<td>Court of Justice of the European Union</td>
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<tr>
<td>CEM</td>
<td>Council for Electronic Media</td>
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<tr>
<td>SPBS</td>
<td>Social and Pedagogical Boarding School</td>
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<tr>
<td>CPC</td>
<td>Special intelligence means</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>FTACCYD</td>
<td>Family-type Accommodation Center for Children and Youth with Disabilities</td>
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<tr>
<td>FTACCYNMC</td>
<td>Family-type Accommodation Center for Children and Youth in Need of Constant Medical Care</td>
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Chapter 1. Political development in Bulgaria in 2022.

2022 was a year of political instability in Bulgaria. During its first half, the country was governed by the government of Kiril Petkov - a coalition composed of the party "We Continue the Change" (PP), which won the parliamentary elections in November 2021, the coalition "Democratic Bulgaria" (DB), the Bulgarian Socialist Party (BSP), and the party "There Is Such a People" (ITN) led by the showman Slavi Trifonov - an organization with an unclear political profile. The government is ruling under conditions of acute political confrontation and internal tensions, which intensified after Russia's military intervention against Ukraine on 24 February 2022. By the end of June, after the withdrawal of support from ITN, the government faced a vote of no confidence in parliament and on 2 August 2022, it was replaced by an interim government of Stefan Yanev appointed by the president. Simultaneously, the President dissolved the National Assembly and scheduled new parliamentary elections, which took place on October 2, 2022. The party that performed the best in those elections, with 25.3% of the vote, was the party Citizens for European Development of Bulgaria (GERB), which had previously governed until April 2021. The other parties that obtained parliamentary representation were PP, BSP, Movement for Rights and Freedoms (DPS), DB, the far-right nationalist, Eurosceptic, and pro-Kremlin party "Vazrazhdane," as well as the party of former interim Prime Minister Yanev, "Bulgarian Rise." By the end of the year, the parties represented in parliament failed to form a coalition capable of electing a regular government. During the entire period after the elections, Bulgaria was governed by the caretaker government of Galab Donev, appointed by the president.

The elections took place under the framework of the Electoral Code, which was amended in February 2022. However, these changes were not in line with the recommendations of local and international observers, including the Organization for Security and Cooperation in Europe (OSCE), which organized monitoring missions for all elections held in Bulgaria in 2021 and 2022. The elections did not allow individuals deprived of their freedom under effective sentences or placed under prohibition to vote, and dual citizens were not permitted to run for parliament or presidency, in violation of international standards. Article 181, paragraph 2 of the Electoral Code forbids election campaigns from being conducted in any language other than Bulgarian and provides for administrative sanctions in cases where campaigning is conducted in another language. Voting was primarily conducted through machines and only exceptionally – through paper ballots. After the elections, however, the Electoral Code was changed once again and the possibility of voting with paper ballots was restored.

The short-lived regular government of Kiril Petkov, the serious challenges it faced as a result of Russia's aggression against Ukraine, and the lack of a functioning parliament after 2 August made human rights a secondary issue in Bulgarian politics. The interim governments appointed before and after the parliamentary elections had limited mandates and did not undertake significant initiatives in the field of human rights. Even when they had the
opportunity during the two amendments to the Electoral Code throughout the year, the deputies were primarily focused on their own political interests and completely disregarded the recommendations of international bodies, as well as the judgments of the European Court of Human Rights (ECHR) against Bulgaria. They failed to undertake any legislative reforms to comply with them.

Chapter 2. Cooperation with international and local organizations for the protection of human rights

In 2022, Bulgaria continued to fail to implement key decisions of the ECHR. None of the groups under enhanced supervision by the Committee of Ministers of the Council of Europe (CoE) were closed for monitoring of their implementation. In 2022, for the first time in many years, both leading and repetitive judgments of the ECHR under monitoring for their execution were noted to have increased in the Committee of Ministers of the Council of Europe. Throughout the year, the European Committee for the Prevention of Torture (CPT) and the Subcommittee on Prevention of Torture of the UN published their reports on their visits in 2021. Both reports outline a series of problems in places of deprivation of liberty and formulate numerous recommendations. In October, the European Commission against Racism and Intolerance published its regular report on Bulgaria, in which it made several important recommendations for amending legislation and policies to combat intolerance based on race and sexual orientation. In December, the UN Human Rights Committee published an evaluation report on the implementation of its recommendations by Bulgaria. The assessment is highly negative in the main areas where the Committee has formulated recommendations.

In 2022 no progress was made by Bulgaria in implementing the judgments of the European Court of Human Rights (ECHR) under enhanced supervision. In March and December, the Committee of Ministers of the Council of Europe (CoE) examined the group of cases of the United Macedonian Organisation Ilinden and Others v. Bulgaria, as well as several other cases related to land and forest restitution from the communist era. In the first group of cases concerning the refusal to register associations of Macedonians in violation of Article 11 of the European Convention on Human Rights (ECHR), the CoE expressed deep concern about the ongoing practice of refusals to register such associations based on grounds that have been examined and rejected by the ECHR, as well as the prolonged period of almost 16 years during which such practices continue. Regarding the cases related to land and forest restitution from the communist era, the CoE welcomed some legislative changes, urged the government to provide more information on the use of the legal remedy ensuring timely completion of restitution, and maintained enhanced supervision over these cases.

1 See below *Freedom of association and peaceful assembly.*
In June, the Committee of Ministers of the Council of Europe (CoE) examined the groups of cases of Kolevi v. Bulgaria and S.Z. v. Bulgaria concerning issues related to criminal investigations, including cases involving the Chief Prosecutor. The implementation of the judgments in both groups was also discussed in December. The CoE once again refused to terminate the enhanced supervision over these cases. Regarding the Kolevi group, the Committee welcomed the initiatives for legislative changes related to investigations of the Chief Prosecutor but noted that their adoption is uncertain. Concerning the S.Z. case, it welcomed the draft amendments to the Criminal Procedure Code (CPC), including judicial control over the prosecution’s refusals to initiate criminal proceedings, the use of various legal remedies in favor of individuals reporting crimes during the pre-trial phase, and the detailed regulation of the reopening of criminal proceedings. However, it emphasized the need for additional legislative changes. During its June meeting, the Committee of Ministers also examined the implementation of judgments in another group of cases - Stanev v. Bulgaria, concerning accommodation and living conditions in social homes for persons with mental disabilities. The Committee took note of the public statement by the European Committee for the Prevention of Torture (CPT) in 2021 and expressed strong concern about the poor conditions in these homes. It urged the government to provide information on the measures taken to address this issue by December and instructed the Secretariat to prepare an interim resolution on this group of cases for its March 2023 meeting in the absence of such information.

In September, the Committee of Ministers of the Council of Europe (CoE) examined the group of cases of Yordanova and Others v. Bulgaria, which concerns violations of the right to private and family life, as well as housing, resulting from the demolition of illegal constructions without requiring a proportionality assessment under legislation. The Committee decided to maintain enhanced supervision over this group of cases due to the lack of legislative changes and positive developments in judicial practice in similar situations.

In December, along with other cases, the Committee of Ministers also examined the group of cases of Association for European Integration and Ekimdzhiev v. Bulgaria, addressing the lack of safeguards against secret surveillance. The Committee expressed concern about the lack of progress in implementing measures to address its recommendations, as well as the new issues raised by the judgment of the European Court of Human Rights (ECtHR) in the case of Ekimdzhiev and Others v. Bulgaria in January 2022. The Committee called on the Bulgarian authorities to make legislative changes to address both the existing problems and those

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2 CoM. 1436th meeting, 8-10 June 2022 (DH), H46-6 S.Z. group/Kolevi v. Bulgaria.
3 Ibid.
4 CoM. 1443rd meeting, 20-22 September 2022 (DH), H46-8 Yordanova and Others v. Bulgaria.
5 See Right to respect for private and family life, home and correspondence.
arising from the new judgment before the appointment of new members to the National
Bureau for Control of Special Intelligence Means in 2023.

In October, the European Commission against Racism and Intolerance published its report
from the sixth monitoring cycle for Bulgaria. The report included a series of important
recommendations regarding combating intolerance towards Roma people, as well as lesbian,
gay, bisexual, transgender, and intersex (LGBTI) individuals, and promoting the integration of
vulnerable communities into Bulgarian society. Some of the key recommendations included:
the adoption of legislation allowing for legal recognition of gender change; conducting
research on forms of discrimination against LGBTI individuals and developing an action plan
to combat intolerance towards them; taking measures to prevent threats and violence against
Roma people; eliminating the de facto segregation in Roma education; protecting Roma
housing from evictions without adequate guarantees; promoting Roma integration through
data collection in the areas of education, employment, housing, and healthcare; strengthening
integration measures for refugees and other persons benefiting from international protection.

In December, the United Nations Human Rights Committee conducted an assessment of
the implementation of the Committee's recommendations formulated in its latest concluding
observations from October 2018. The Committee positively assessed the measures taken in
several areas. However, it also expressed concerns about the lack of progress and called for
the provision of more information, particularly regarding the fight against hate speech and
hate crimes, the rights of minorities, and protection against discrimination based on ethnic
and religious grounds, as well as sexual orientation and gender identity.

Chapter 3. Right to life, protection from torture, inhuman and
degrading treatment

In October 2022 the CPT published its report on its visit in October 2021. The report
noted some improvements but also highlighted the lack of progress in preventing ill-
treatment and improving material conditions in the visited institutions. In October 2022, the
UN Subcommittee on Prevention of Torture (SPT) published its report on its visit held at the
end of October 2021. In this report, the SPT made several observations and
recommendations regarding the prevention of inhuman and degrading treatment, as well
as the material conditions in the visited institutions. In 2022 the BHC published the results
of its comprehensive survey conducted between June and November 2021. This study
revealed a widespread occurrence of physical abuse during police detention of individuals

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6 CoM. 1451st meeting, 6-8 December 2022 (DH), H46-7 Association for European Integration and Human Rights
and Ekimdzhiev group v. Bulgaria.
7 ECRI. ECRI report on Bulgaria: Sixth monitoring cycle, Council of Europe, 4 October 2022.
8 HRC. Report on follow-up to the concluding observations of the Human Rights Committee,
suspected of committing crimes, with no positive developments compared to previous similar studies.

Report of the CPT

On 18 October 2022, the CPT published its report on its periodic visit from 1 to 13 October 2021. The CPT visited a large number of institutions under the Ministry of Internal Affairs (MIA), the Ministry of Justice (MJ), the Ministry of Health (MH), and the Ministry of Labor and Social Policy (MLSP). The Committee reported cases of physical abuse and psychological pressure on detainees by the police during questioning. Once again, it expressed regret that the fundamental safeguards against ill-treatment, such as the right to access a lawyer and a doctor, as well as the right to inform a third party about police detention, are not being implemented. In this regard, the CPT noted a lack of progress since its previous visits.

Regarding penitentiary institutions, the CPT noted that the national legal standard of 4 sq. m per prisoner is generally respected mainly due to a decrease in the number of prisoners in Bulgaria, with the exception of Plovdiv Prison, which remained overcrowded. Among other findings, the most serious ones concern the poor material conditions in Sofia Central Prison and the Closed-Type Prison Unit "Kremikovtsi" associated with it. With regard to this unit, the CPT recommended its closure. The Committee observed a significant problem with medical services and psychiatric assistance, as well as the lack of adaptation of the prison architectural environment to prisoners with disabilities. Other issues include violence among prisoners and drug use.

Regarding institutions for active treatment of mentally ill individuals, the CPT noted serious problems of physical violence against patients by staff in the psychiatric hospital (DPB) in Karlikovo, as well as to a lesser extent in the psychiatric hospitals in Lovech and Kardzhali. The Committee highlighted inadequate treatment in all visited psychiatric hospitals, including insufficient staffing in the wards, lack of a multidisciplinary clinical approach, and an overemphasis on pharmacotherapy. Practices of immobilization and isolation of patients were also identified as significant issues, such as tying them in uncomfortable positions, leaving them immobilized for extended periods of time, and a lack of proper record-keeping in the journals.

In 2021, the CPT visited three social care homes for individuals with mental disorders, located in Banya, Lakatnik Train Station, and Petkovo village. In two of these institutions,

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9 CPT. Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022)20, Strasbourg, 18 October 2022. A summary in Bulgarian is available at https://rm.coe.int/1680a88ebf.
10 For more detail see Conditions in places of detention.
11 For more detail see Rights of persons with psycho-social and/or intellectual disabilities.
specifically in Banya and Petkovo, the Committee identified instances of physical violence perpetrated by staff and security personnel against the residents. It also noted problems with poor material conditions, insufficient staffing, resulting in low-quality care and compromising the safety of the residents. Despite the prohibition of immobilization in social care homes, the CPT once again observed immobilization in two out of the three visited facilities. Due to the serious long-standing systemic problems concerning the conditions and treatment of residents in social care homes in Bulgaria in November 2021 the CPT made an unprecedented and strongly critical public statement. In this statement, it denounced the physical abuse of residents by staff, the poor material conditions in the homes, staff shortages, as well as the unlawful use of immobilization and isolation. The Committee also stated that the reform of care for individuals with mental issues in social care homes "at best represents transinstitutionalization rather than a meaningful attempt at genuine deinstitutionalization." The residents in social care homes are effectively "abandoned by the state".

Report of the UN Subcommittee on Prevention of Torture

In October 2022, the Subcommittee made its public report on its visit in late October 2021. In this report, the Subcommittee summarized its observations on visited places of deprivation of liberty and issued a series of general recommendations to Bulgaria for the prevention of torture, inhumane, and degrading treatment. The latest recommendations include:

- Introducing a specific offense of torture into the Criminal Code in accordance with the definition of the Convention against Torture;
- Establishing safeguards against ill-treatment (information on rights, access to a lawyer, access to independent medical examination, notification of third parties) in the Law on the Ministry of Internal Affairs;
- Reforming the juvenile justice system for children in conflict with the law;
- Granting conditional early release to all prisoners, including those sentenced to life imprisonment;
- Implementing non-custodial measures as alternatives to detention.

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12 Fore more detail - ibid.
14 SCPT. Visit to Bulgaria held from 24 to 30 October 2021: recommendations and remarks addressed to the State Party, CAT/OP/BGR/ROSP/R.1, 18.03.2022.
The Subcommittee identified a number of problems in the institutions visited by its delegation. Overall, it found poor material conditions in the detention cells of all visited police stations, including poor hygiene, lack of mattresses, limited access to natural light, inadequate ventilation, and insufficient provision of food and bedding. According to the Subcommittee, another serious issue is the records of detainees, which are only in paper format, not stored according to standardized systems, and do not allow for tracking the status of detainees.

Regarding pretrial detention facilities and prisons, the Subcommittee found poor material conditions, hygiene, and food. The bed bugs, which are widespread, was identified as a particularly serious problem, and the efforts to address this issue were deemed ineffective. These observations by the Subcommittee are consistent with the findings of the Bulgarian Helsinki Committee during its visits to several prisons throughout the year. Isolation units in the visited prisons were also a concern, as they were excessive and recurring, and in some prisons (such as Sofia Central Prison), they were confined to very small cells. The Subcommittee expressed particular concern about the lack of rehabilitation programs for detainees aimed at facilitating their integration into society after serving their sentences. Adequate medical services were also lacking, mainly due to insufficient medical staff. Among the numerous issues with medical services in prisons, reporting of traumatic injuries was a problem. The Subcommittee demands that such injuries be immediately brought to the attention of the respective prosecutor, even in the absence of a formal complaint or allegation.

The Subcommittee’s findings regarding the Special Home for Temporary Accommodation of Foreigners (SHTAF) in the Busmantsi district of Sofia are particularly serious. The Subcommittee observed that the Bulgarian authorities routinely detain migrants as a default measure rather than as a last resort. Furthermore, they routinely detain migrant children, which is prohibited under any circumstances.15 According to the Subcommittee, the material conditions in the facility are a serious problem, including the presence of bed bugs, lack of access to toilets at night, overcrowding in certain sectors, lack of activities, as well as a lack of audio and video communication access with people outside the facility.16 Complaints from residents about mistreatment by staff, including physical assaults, pushing, shoving, and verbal aggression, were also identified as a serious problem. The Subcommittee found that healthcare in the facility is highly inadequate due to a lack of sufficient medical staff and interpreters during medical examinations. During their visit to Busmantsi in late July 2022, the

15 During its visit to Busmantsi at the end of July 2022, the NPM at the ombudsman did not find any unaccompanied minors or minors (NPM. Report on inspections carried out in structures of Directorate “Migration” to the Ministry of the Interior and the DAB, p. 9, available at: https://www.ombudsman.bg/storage/pub/files/20221012141950%20Доклад%20проверка%20бежанци%20-%20поли%202022.pdf.

16 During its visit to Busmantsi at the end of July 2022 the NPM at the ombudsman found also presence of cockroaches and bedbugs and received numerous complaints of bites from residents (Ibid, p. 12).
National Preventive Mechanism (NPM) under the Ombudsman’s office did not observe significant changes in the situation regarding medical care for residents and issued a series of recommendations.¹⁷

**Study on the Use of Force by the Police**

In 2022, the Bulgarian Helsinki Committee (BHC) published the results of its survey conducted in Bulgarian prisons from June to November 2021. The survey involved a representative sample of 1010 individuals deprived of their liberty, whose pretrial proceedings had commenced after 1 July 2019. BHC researchers conducted face-to-face interviews with the respondents in all prisons and a large number of correctional facilities in Bulgaria. The aim of the study was to gather information on various aspects of the pretrial process. The study can be compared to two previous similar surveys conducted by the BHC using a comparable methodology between 2015 and 2017. Some of the questions in the survey focused on gathering information about physical abuse during detention and inside police stations. The percentage of respondents who claimed that physical force had been used against them either during detention or inside police stations, or in both cases, was 32.6%. These numbers are even more alarming when excluding respondents who stated that they were not detained by the police at all. In such cases, the individuals who reported the use of physical force during detention accounted for 26.9%, while those who experienced mistreatment inside police stations accounted for 24.1%. The survey results do not indicate any positive trends compared to the data obtained from the aforementioned previous surveys conducted between 2015 and 2017.

Key issue regarding the mistreatment of detainees by the police is the so-called "intelligence interviews" regulated by Article 10, paragraph 1, item 1 of the Law on the Ministry of Interior, which are most commonly conducted without the presence of a lawyer. The majority of respondents (61.4%) who have been detained claim that they did not have a lawyer present during their 24-hour detention at the police station. Additionally, nearly all respondents (22.4%) who claim to have met with a lawyer did so before the expiration of the 24-hour detention period, which means that the combined share of the two groups is 83.8%. In cases where the detained person does not wish to make a confession or provide other information, the "intelligence interview" often involves threats and physical abuse until the desired result is obtained. Technically, information obtained in this manner alone cannot be considered valid evidence, but it provides leads that are then "shaped" into evidence during the initiation of criminal proceedings. Roma people reporting physical abuse during their detention at police stations account for more than twice the proportion compared to Bulgarians.¹⁸

¹⁸ See the whole report from the study at: [https://bghelsinki.org/bg/reports/problemitse-ravnoto-tetirane-v-dosadebnoto-nakatvelno-proizvodstvo](https://bghelsinki.org/bg/reports/problemitse-ravnoto-tetirane-v-dosadebnoto-nakatvelno-proizvodstvo).
This widespread use of physical force during police detention and within police stations continues to go unpunished. According to the data published in the Prosecutor’s annual report in 2022, only two prosecutor’s acts were submitted to the court in 2021 regarding police violence (one indictment and one proposal under Article 78a of the Criminal Code) against two individuals. There were no convicted/sanctioned or acquitted individuals with a final judicial decision during the year.19

Decisions of the ECtHR in cases against Bulgaria on the right to life, protection from torture, inhuman and degrading treatment

In 2022, the European Court of Human Rights (ECtHR) considered several cases against Bulgaria regarding the right to life and protection against inhuman and degrading treatment. In the case of I. and Others v. Bulgaria20 the ECtHR found that Bulgaria had violated its positive obligation to protect the life of a young woman who was killed by her husband in the center of Sofia in the summer of 2017. Although the authorities had sufficient information that the husband had repeatedly threatened to kill his wife because she wanted to leave him, no action was taken to prevent the murder. The complaint before the ECtHR was filed by the mother and two daughters of the victim, invoking violations of Article 2 of the European Convention on Human Rights (ECHR) - the right to life, and Article 14 - the right to protection against discrimination. The Court did not find a violation of the right to protection against discrimination in relation to the right to life, as it did not consider that it had sufficient evidence to conclude that the authorities’ omissions were a general justification for violence against women. However, the Court specifically highlighted the lack of statistical data collected by the authorities on how various aspects of domestic violence are addressed. The ECtHR found this to be a serious omission, emphasized by other international organizations that have called on the country to conduct a serious analysis of the problem. The Court found that the Bulgarian authorities failed to take timely action to respond to the victim’s credible complaints and analyze the risk to which she was exposed in the context of the specific dynamics of domestic violence. "If they had done so, the authorities would have realized that Mrs. V.’s husband posed a real and immediate threat to her life. They would have confiscated the illegally possessed firearms, detained the husband for violating the restraining order against domestic violence, and provided Mrs. V. with police protection," the Court established. All these steps were possible within the procedural period according to Bulgarian legislation, but they were not taken by the authorities. The ECtHR carefully and thoroughly examined the actions of the police, analyzing the omissions that led to the murder. The Court also paid attention to the actions of the prosecution, which entirely relied on the police

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opinions that there was no evidence of a committed crime and refused to initiate pretrial proceedings without conducting any independent actions. The authorities should have assessed that there was a real and immediate danger to the life of the victim. According to the Court, this omission was partly due to the lack of training of police officers on domestic violence issues. As a result, the ECtHR found a violation of Article 2 of the Convention.

The case of **Ignatov v. Bulgaria**\(^{21}\) is related to allegations of mistreatment by the police during a police operation on 20 November 2017. According to the applicant, he was working at a car wash when two unknown men in civilian clothing, who were later identified as police officers, forcefully removed him from a customer's car, knocked him to the ground, and struck him several times with a baton. Afterwards, the applicant was taken into the car wash building, thrown to the ground, and beaten again. Later, he was interrogated, and his head was allegedly struck against the wall. However, the police officers deny hitting the applicant and using batons. They claim that the car in which the applicant was traveling had been reported stolen and that the applicant resisted their attempts to apprehend him. The Sofia District Prosecutor's Office refused to initiate criminal proceedings against the two police officers, stating that there was insufficient evidence of a crime. Nevertheless, the prosecution concluded that the applicant had attacked the police officers and that physical force and handcuffs were necessary for his apprehension, based solely on the written statements of the police officers and without considering the statements of the applicant and other eyewitnesses. The ECtHR noted that the medical certificate provided by the applicant, which indicated injuries consistent with his account of the events, indicated that he had been struck with blunt objects. The Court concluded that the explanation provided by the authorities was not convincing and that the intensity of the force used against the applicant was disproportionate. Furthermore, the Court noted that the preliminary investigation in the case was not sufficiently thorough and that the prosecutors' conclusions regarding the absence of a crime were premature and unconvincing. Therefore, the ECtHR found a violation of Article 3 of the Convention both in substantive and procedural aspects.

In the case of **I.P. v. Bulgaria**\(^{22}\) the European Court of Human Rights (ECtHR) ruled that the Bulgarian authorities did not effectively investigate the sexual assault of a minor. The case concerns the sexual contact of an underage girl, who had not yet reached the age of 14, with four men from her neighborhood. Upon learning about the incident, the child's mother filed a complaint with the police in May 2015, naming the perpetrators identified by her daughter, who were known in the neighborhood. On the same day, the four men were interrogated, and searches were conducted in their homes, with evidence being seized. The next day, the prosecutor at the Sofia District Prosecutor’s Office ruled that the facts of the case could not be classified as rape under Article 152 of the Criminal Code but rather as the lesser offense of sexual intercourse with a person under the age of 14 under Article 151 of the Criminal Code.


The case was referred to the district prosecutor in Botevgrad, who was competent to conduct the criminal investigation into the specified crime. In July, however, the district prosecutor found that there was coercion during the sexual act with the child, leading to the materials being sent back to the regional prosecutor's office. In September 2017, the regional prosecutor ruled that the evidence collected in the case was contradictory. While acknowledging that according to the case materials, the child appeared to have been involved in sexual contact in April or May 2015, the regional prosecutor referred the case back to the district prosecutor's office. In June 2018, the district prosecutor's office found that the perpetrators of the act could not be identified and terminated the proceedings. In October, the district court confirmed this decision, as well as the fact that no evidence of rape had been established. The investigation into the hypothesis of sexual intercourse with a minor was not pursued by the prosecutor's office, despite the undeniable evidence of this crime. The ECtHR found that the investigation had been timely and sufficiently thorough in its initial stages. However, after the ruling in September 2017, nine months had passed without any further action being taken in the investigation until the district prosecutor decided to terminate the proceedings in June 2018. After that, over fifteen months elapsed before the district court ruled on the complainant's appeal against the decision to terminate the proceedings. Such delays, the Court noted, could obviously undermine the effectiveness of the investigation. At the same time, despite the numerous pieces of evidence, the prosecutor's instructions, and the notes of the victim's lawyer, no conclusion had been reached regarding the crime of sexual intercourse with a minor, no charges had been brought, and no instructions for further investigation had been given. The ECtHR did not find the prosecutor's decision to terminate the investigation to be based on a careful and objective analysis of the collected evidence. This decision, the Court noted, compromised the investigation. The ECtHR did not find the conducted investigation to be effective, as required by Articles 3 and 8 of the European Convention on Human Rights (ECHR), and thus established a violation of these provisions.

In the case of **Stoyanova v. Bulgaria** the European Court of Human Rights (ECtHR) established that the Bulgarian state violated Article 2 (the right to life) in connection with Article 14 (freedom from discrimination in the exercise of rights) of the ECHR by failing to acknowledge that the presumed sexual orientation of the crime victim had motivated the perpetrators. The case pertains to the murder of Mikhail Stoyanov, a 25-year-old medical student who was killed in an attack in Borisova Gradina Park in Sofia in 2008. The applicant in the case is the mother of the deceased, Hristina Stoyanova. During the proceedings before the Bulgarian courts, it was established that the three attackers of Stoyanov were part of a group of six high school students who frequently gathered in the park and targeted homosexual men, referring to their initiative as a “cleanup.” The verdict imposed by the Supreme Court of Cassation (SCC) did not consider the specific motive of the perpetrators and thus failed to take into account the aggravating circumstances. The ECtHR found that the homophobic motive had been established by the authorities, but Bulgaria's legislative framework did not allow for

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an appropriate response to the homophobic motives of the attack. It emphasized that in its decision, the SCC did not even mention the homophobic motivations of the attackers while discussing the aggravating and mitigating circumstances. In this case, the ECtHR applied Article 46 of the Convention and compelled the authorities to align Bulgarian legislation in a way that would prevent future violations. Bulgaria should ensure that violent attacks motivated by the actual or presumed sexual orientation of the victim are treated as serious criminal offenses under its criminal law.

In the case of Kutsarov v. Bulgaria24 the parents of Plamen Kutsarov, who died in police custody in January 2009, claim that the police officers who escorted their son are responsible for his death and that the investigation into the events was not sufficiently effective. According to the facts, in January 2009, the police were investigating the alleged abduction of a businessman named K.B. During the investigation, the police established that Plamen Kutsarov was the person who had contacted K.B.'s wife by phone to demand a ransom. He was arrested and taken to the police station for questioning, but during the transfer to another location, he experienced a health problem and was taken to the hospital, where he was pronounced dead. The cause of death was cardiac arrest. Charges of negligence were brought against the implicated police officers but were later dismissed. The appellants argue that not all circumstances were clarified, not all responsible individuals were held accountable, and the courts acquitted the officers by disregarding the evidence against them. The government contends that the investigation was conducted in accordance with the requirements of Article 2 of the Convention, carried out by independent authorities, and all necessary measures were taken. Subsequently, the European Court of Human Rights (ECtHR) examines the actions taken by the authorities in investigating the death of Plamen Kutsarov, noting that a criminal investigation for murder was promptly initiated and the individuals responsible for the investigation were independent from those involved in the events surrounding Plamen Kutsarov's death. The ECtHR also notes that the investigators made significant efforts to gather evidence from the outset of the investigation, and the collected evidence led to the indictment of two individuals. The court concludes that the authorities took reasonable steps to gather evidence related to Plamen Kutsarov's death and that the investigation was conducted adequately. The deceased's parents also participated in the investigation and had access to the evidence. Regarding the death of the detainee, the government claims that Kutsarov died suddenly from a heart attack and not due to the actions of the police officers. The ECtHR finds that the national courts had the opportunity to examine all witnesses and assess their credibility, review the evidence collected during the investigation and the judicial process, and provide well-founded decisions. The court also considers that no new evidence challenging the findings of the national courts has been presented in this case. Therefore, the court determines that Kutsarov's death cannot be attributed to any violent actions by the police and, consequently, there is no violation of Article 2 of the Convention. Regarding the

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responsibility of the police officers to provide assistance, the court concludes that the prompt intervention of the police to provide aid to the detained person after his attack, the swift order for his transportation to the hospital, and the immediate execution of this order by the police officers exclude any omission by the authorities to protect the life of the appellants' son. Consequently, the ECtHR unanimously decides that there is no violation of Article 2 of the Convention in its procedural or substantive aspects concerning the state's obligations.

Chapter 4. Right to personal freedom and security

In 2022, the COVID-19 measures were gradually lifted. In November, the Constitutional Court declared the procedure for the mandatory placement of mentally ill individuals for treatment via video conferencing to be unconstitutional. No changes were made to the legislation related to the placement of children in institutions for the purposes of educational supervision.

The Council of Ministers for the Supervision of the Execution of the ECtHR Stanev v. Bulgaria judgment continued its enhanced monitoring in 2022. However, Bulgaria still does not provide the required legal guarantees against arbitrary deprivation of liberty in the placement of individuals with disabilities in social institutions and residential services, even with the procedures outlined in the Social Services Act (SSA) enacted in 2020. People with disabilities who are not subject to complete prohibition or are subject to limited prohibition are not protected from arbitrary placement.

Decision of the Constitutional Court regarding video conferencing in mandatory placement for treatment.

In 2022, the COVID-19 measures were gradually lifted. On 17 November the Constitutional Court issued a decision declaring the procedure for mandatory placement of mentally ill persons through video conferencing as unconstitutional. This procedure was introduced in December 2020 through amendments to Article 158, paragraph 5 of the Health Act, which came into effect in late June 2021. According to the amendments, when the health condition of a person does not allow them to appear in court proceedings, as well as "in cases of declared state of emergency, martial law, disaster, epidemic, extraordinary epidemic situation, or other force majeure circumstances, the person whose placement is sought, as well as the expert witness appointed, may participate in the case through video conferencing, with their identity being verified by the director of the medical institution or an authorized person." Mentally ill individuals appeared before the court via video conferencing from the medical facilities where they were urgently placed, while their lawyers (usually state-appointed) and expert witnesses participated in the court proceedings from a different location.
This provision was attacked by the ombudsman in the CC in July. The CC accepts that given the importance of the affected right to personal freedom and inviolability and the vulnerable state of the person whose placement is requested, “despite the legitimate purpose that led to the implementation of the measure under Art. 158, para. 5, third line of the Law on Health, and namely - protection of the life and health of the participants in the legal proceedings for placement for mandatory treatment in the context of an extraordinary epidemic situation with the COVID-19 infection, the consequences of which affect to a constitutionally intolerable extent the legally established procedural guarantees protecting the fundamental right to personal freedom and integrity of individuals within the framework of a fair trial. Therefore, the CC should find the provision of Art. 158, para. 5, third line of the Law on Health, allowing the participation of persons in the court proceedings on the application of a compulsory measure of mandatory placement and treatment via video conference connection, to be unconstitutional due to a contradiction with Art. 30, para. 1 of the Constitution”\(^{25}\). According to the CC, it cannot be assumed that the digital conduct of the judicial process could be equivalent in its effect to a physically present court session with direct contact between the decision-making body, on the one hand, and the person, his defender and the expert, on the other. The CC also established violations of the right to defense, Art. 56 in conjunction with Art. 122 of the Constitution due to the lack of effective personal contact between the defender and the detained person. Insofar as the current legislation does not provide for explicit definitions of disaster, epidemic and force majeure circumstances, “their introduction leads to unlimited opportunities for abuse in limiting the fundamental rights of citizens”. Due to the above, it should be assumed that the provision of Art. 158, para. 5, third line of the Health Law does not meet the standards of the principle of the rule of law in a formal sense, which require laws to be clear, precise and consistent, affects the fundamental right of individuals to personal freedom and integrity, and does not meet the standards of effective protection in all stages of the process laid down in the Constitution.

CMCE monitoring of the *Stanev v. Bulgaria* case

In 2022, the CMCE continued the enhanced monitoring of the implementation of the ECtHR *Stanev v. Bulgaria* decision. Bulgaria still does not provide the required legal guarantees against arbitrary deprivation of liberty when placing people with disabilities placed under guardianship in social institutions and residential services, even with the procedure under the SSA, which entered into force in 2020. The ECtHR held that consent is invalid if it is not proven that the person has received all the necessary information to enable him to give valid consent.\(^{26}\) According to the UN Convention on the Rights of Persons with Disabilities (CRPD), to which Bulgaria has been a party since 2012, persons with disabilities have the right to live


independently in the community. The Convention requires, in compliance with this right, that persons with disabilities be provided with support, reasonable accommodation, etc., to enable them to exercise their legal capacity. The concept of informed consent is the mechanism by which they express their will and preferences. According to Art. 5 and Art. 13 of the CRPD, states are obliged to provide procedural and reasonable facilities to ensure that persons with disabilities are able to give valid and informed consent. No argument based on disability and related difficulties can serve as grounds for excluding the State's obligation to provide procedural facilities.

According to the current Bulgarian legal framework, a person with disabilities can be placed in a residential service only if he gives explicit consent to this. According to Art. 76 of SSA, judges can require social service providers to support people with disabilities in understanding information and to offer information in an appropriate format.

Placement of people under guardianship in social institutions and services under national law: the legal framework at a glance

The SSA came into effect on 1 July 2020. According to it, the placement in a residential service (social home or Family-type Accommodation Center (FTAC), sheltered housing, transitional housing, etc.) of adults placed under guardianship, is performed by the district court at the person's current address. The placement request is made by the "Social Assistance" directorate based on a written request from the person and an opinion of their guardian, as well as an attached report, which also contains an opinion on the possibilities of caring for the person in a home environment; the preliminary assessment of needs and reference to existing appropriate social services for residential care within the area and available places. When considering mandatory placement cases, the court may collect evidence of its own initiative and must examine the wishes of the person whose placement is sought, including through the involvement of experts. The court considers the request immediately in an open session with the participation of the "Social Assistance" Directorate, the person and their guardian. In the event that the person whose placement is sought cannot participate in person in the hearing, it is held outside the court building. The court renders a decision within one month from the date of the request with a decision that is announced to the parties and executed immediately. The court may grant the request for placement in a residential service of a person under guardianship only if the proceedings do not establish the possibility of providing care and support for the person in a home.

27 CRPD, effective for Bulgaria as of 21 April 2012, Art. 19.
29 Ibid., Art. 95, par. 2 and 3.
30 Ibid., Art. 97, par. 2.
environment and in the community. The decision specifies the term of placement, which cannot be longer than three years.

Although the SSA perceives the placement as a temporary measure, for a period not longer than three years, there is a possibility of continuing the placement. The term of placement in residential care of a person under guardianship can be extended if the person has no access to support and care in a home environment. Experience shows that extending the placement is common practice. With the construction of new residential services, the greatest change for many disabled people in institutions is their move from an institution to a residential service. For people placed under guardianship, placement is done through the courts.

The judicial practice in cases of placement of people under guardianship following the SSA procedure in residential services: examples and problems

In late 2022, a study of 81 placement court decisions rendered after 1 July 2020 and published in the legal information system, set out to determine how the court explored existing options for support and care for people with disabilities under guardianship in a home environment and in the community before allowing their placement in residential care. In none of these 81 court decisions has the possibility of support in the community been explored by providing, for example, a set of measures such as a combination of accommodation in municipal housing and provision of a personal assistant - measures that are possible, permissible and at least theoretically existing in Bulgaria (although underdeveloped). It was established that in none of the court decisions procedural facilities were provided to people whose placement was sought to ensure that they understood the nature of the legal process and participated in an informed manner. The procedural role of the persons whose placement is sought is unclear and they did not benefit from any legal assistance in any of the hearings. There is no data as to whether they were notified of the decisions made at all, and even less whether the information about the decisions was communicated to them in an accessible way. There is also no evidence that the placed persons were offered any alternative other than an institution or another form of residential care. All of this paints a picture of applying the law to achieve formal or apparent

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31 Ibid., Art. 98, par. 2.
32 Ibid., Art. 101.
33 The study was prepared by Aneta Genova, lawyer from the "Network of Independent Experts - NIE", an organization working in partnership with the "Validity" Foundation - Budapest, in the process of developing the opinion of 8 NGOs to the CMCE in the case of Stanev v. Bulgaria, sent on 23 January 2023.
34 "Lacorda" Legal information system.
35 Procedural facilitation is a mandatory element of the right of access to justice, guaranteed by the CRPD, Art. 13.
36 Cf. Art. 99 of SSA.
consent without the necessary legal safeguards for actual informed consent, which could qualify placement in residential care as something other than imprisonment.

Several main trends were noted in the review of the above-cited court decisions. First, only residential services are examined as an opportunity to provide social support and no alternative opportunities. For example, some decisions explicitly list the documents that the court has collected in order to establish the available alternatives\textsuperscript{37}. The list of established possibilities for providing social support includes a number of institutions and residential services, but no decision contains a discussion of another alternative outside of those, for example a possible combination of using social housing, assistant support, supported employment, etc. Many other court decisions lack any exploration of alternatives at all, even similar to the one above. The studied 81 decisions clearly illustrate the approach of the Bulgarian courts to the issue of procedural facilitation under Art. 76 of the SSA. In short, there are none. This completely changes the meaning of the law and turns it into a formal and bureaucratic procedure aimed at justifying the detention of people in residential services, rather than a means to finding an actual workable solution to respect their rights and integrate them into the community, as required by CRPD and which is the original idea of SSA.

The examined decisions can be divided into several groups: those in which consent is somehow present, albeit formally; those where it is lacking because it was "impossible" to obtain; and decisions that lack consent.

\textbf{Formal consent to placement}

In some of the decisions studied, it is recorded that the person has given their consent to living in an institution. The notes are brief, succinct and do not contain any information about the person’s reasons for giving consent; nor do they contain alternatives that have been offered to the person (i.e., a choice between what and what has been made; in many cases where no alternative is offered, consent reflects only an acceptance of the inevitable). No decision contains any information about measures taken to inform and support the person in connection with their participation in the judicial procedure. It remains unclear whether the person even knew what procedure they were participating in and why, what other options they had and how to exercise them, what consequences their procedural behavior and what they said before the court had. These decisions do not contain any specific information on matters relating to procedural facilitation. We should not forget that all these people are disabled people placed under guardianship, which implies the need for support and procedural facilitation before they can be considered as giving informed consent. If they did not need such facilities, it is necessary to take steps to cancel their guardianship - if the court has established in a clear and indisputable way that they fully understand the meaning of the judicial procedure. Instead, the decisions contain extensive quotes from welfare reports

\textsuperscript{37} For example, a decision rendered on May 15, 2021 on case No. 1430/2021, District Court - Vratsa; Decision No. 260339 of 1 June 2021 of Regional Court - Vratsa.
related to their diagnoses, history of permanent institutionalization and "impossibility" of independent living. The latter has also not been questioned at any of the hearings.

**Arbitrary inferences for the presence of consent**

Some decisions make arbitrary inferences (based on gestures and facial expressions) of consent without ensuring (as above) that the person understands the procedure, alternatives and consequences, that even a minimal attempt has been made to explain to them the meaning of the procedure they are participating in.38

**Problematic motives for expressing consent**

The lack of procedural facilitation and criticality on the part of the judicial panels leads to accepting as valid reasons for consent that have nothing to do with the essence of the procedure.39 In some decisions, the people’s awareness that they have no alternative is palpable, although it is not clearly stated. In another trial, it was found that the person answered clearly and accurately and was fully able to understand the situation in which they were placed. It is not clear what exactly the woman says and how she perceives her situation, but it is clarified that she has no relatives to support her and this is "the only reason to request her placement".40 A special case of placement, in which the person has given consent, was rendered by a decision of 18 June 2021 in civil case 851/2021 of the I Panel of District Court - Vidin. In the court proceedings for placement that resulted in the cited decision, the case of a person with a diagnosis of "mild mental retardation" and "dromomania" as well as "severe behavioral problems" was considered, without making it clear what the latter were. The court did not explore alternatives for community support at all, contenting itself with saying that relatives were unable and unwilling to care for him. The conclusion about the conditions in the mentioned house are completely uncritical. In 2020, the home in the village of Kudelin was visited by the CPT, which found inhuman and degrading conditions to which the people there were subjected.

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38 In decision No. 264 of 27 July 2020 in case No. 615/2020 of the District Court - Kardzhali, it is stated that the person "does not communicate verbally, but perceives the statements of the participants in the process" and expresses his opinion through gestures and facial expressions, and namely that he likes where he lives and wants to stay there. Identical reasons are contained in Decision No. 267 of 28 July 2020 in case No. 635/2020, issued by the same panel of the same court. The identical reasoning of a series of decisions rendered by the same panel within a few days also speak of a formal approach to the procedure.

39 For example, in Decision No. 265 of 27 July in case No. 616/2020 of the Regional Court - Kardzhali, it is stated that the person indicated that she wished to remain in the service because her sister (twin) was also there. The woman’s obvious attachment to her sister and human fear of separation cannot be accepted as valid grounds for consent to placement, especially since there is no evidence that alternatives to supporting these two women together and in the community have been explored.

40 Decision No. 260339 of 1 June 2021 in case No. 1610/2021 of the Regional Court – Vratsa.
Lack of procedural facilitation in case of communication difficulties

Several decisions indirectly address communication difficulties. In none of these decisions did the courts consider the use of a communication expert to convey the wishes of disabled people who cannot communicate verbally. In other court decisions, the person's opinion is not sought at all and there are no reasons why. In some cases, the courts have made some effort to hear the person but found it "impossible". For example, it is accepted that because of the "particular nature of his illness" the person is unable to express an opinion. The conclusion of the court is not that the person needs procedural facilitation, but that the person "cannot express an opinion" or that "contact is impossible". Such statements are laconic, do not reveal attempts to contact the person and implement support measures despite the opportunities provided by the SSA (in Article 97, Paragraph 2). Some court decisions document that the court has attempted to communicate with the person but was unable to elicit information regarding the individual's wishes and preferences. The decisions are diverse, and the reasons for assuming that there is an “impossibility” are, to say the least, unconvincing. In some cases, the “impossibility” was established via video conferencing (via Viber). In another case, the inference was made on the basis of a refusal to answer the court's questions. In other decisions, the court made an attempt, but was unable to achieve communication with the person or judged that such communication was “impossible". Finally, there are also decisions in cases where consent was not expressed or the person clearly expressed different preferences. For example, in decision No. 56 of 27 February 2020 in case No. 147/2020 of the Regional Court - Ihtiman, the person disagreed with the placement. However, he was placed in residential service. In decision No. 260220 of 13 April 2021 under civil case No. 943/2021 of the Regional Court - Vratsa, it is stated that the person wants to be accommodated "in the new housing", which obviously does not match the institution where he was. These court decisions show that people without special medical needs can be placed in an institution just because they have lost their loved ones.

This case law study leads to the following conclusions: Bulgarian courts rarely, if ever, seek to provide procedural facilities to people with disabilities so that they can express their consent in a valid way; the special vulnerability of people with disabilities is not recognized and no concrete steps are taken to adapt the judicial process to this vulnerability; the procedural role of the affected person in the legal process for his placement in a social institution/service is extremely unclear (in many court decisions it is not at all clear whether they were summoned, whether they were notified of the decision, whether they have the right

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41 For example, Decision No. 260273 of April 29, 2021 in case No. 1474/2021 of the District Court - Vratsa; Decision No. 260318 of May 25, 2021 in case No. 1480/2021 of the Regional Court - Vratsa. The last decision concerns a person who suffers from “deafness”.

42 Decision No. 445 of 29 July 2020 in case No. 1463/2020 of the Regional Court - Vratsa. The decision is interesting in that the court apparently had evidence that the person had a vague diagnosis - "perhaps on the autism spectrum", as well as a clearly identified another person who was able to communicate successfully with him. A specific approach was clearly needed, as well as a procedural facility that was in no way burdensome to the court (the use of support from a trusted person), but the court missed these opportunities.

43 Decision No. 260004 of 22.01.2021 in case No. 1066/2020 of the Regional Court - Velingrad

44 Decision No. 250 of 23 July 2020 in case No. 572/2020 of the Regional Court - Kardzhali.
to a lawyer and, if so, under what conditions; failure to provide any reasons (whatsoever) or
generalized or stereotypical reasons makes it practically impossible to monitor compliance
with national and international law.

The review above shows that the methods for establishing the wishes of people with
disabilities to live in institutions do not meet the requirements of Art. 5 of the ECHR, as stated
in the decision in the case of Stanev v. Bulgaria. Social institutions and residential services
become a default option for people with disabilities, and not a last resort, as required under
Art. 5 of the ECHR. By the end of 2022, the government has not presented a detailed
investment plan for services that would lead to independent living for disabled people in the
community. As well as being in violation of the notion of community-based services as
outlined by the UN Committee on the Rights of Persons with Disabilities (in the
Deinstitutionalization Guidelines, paragraphs 22 – 2845), the failure to create meaningful
alternatives to institutions is not in compliance with the ECtHR’s requirement that people with
disabilities should not be accommodated in social institutions solely for social reasons. The
lack of alternative services in the community affects people with disabilities, whether they are
deprived of legal capacity or not. Unfortunately, even in 2022, the path for people with
disabilities placed in institutions and other types of residential services is closed. They cannot
apply for social housing, nor are they entitled to a personal assistant.46 This makes it
impossible to leave the institution because there is simply nowhere for them to go and no one
to support them even if they try. Their choice is reduced to life on the street or in an
institution, which is not really a choice.

Decisions of the ECtHR in cases against Bulgaria regarding the right to personal
freedom and security

In 2022, the ECtHR rendered two decisions in cases related to the right to personal liberty
and security. The case of Ali Reza v. Bulgaria47 concerns an order issued for the expulsion of
an Iraqi national. It found a violation of Art. 5, § 1f due to the fact that for more than seven
months the person was detained in the SHAF in Busmantsi, without the authorities taking any
measures during the first 6 months to establish the necessary documents for the person’s
expulsion, and thus his detention was unjustified for most of this period. The Court considered
that the grounds which had originally been the basis of the appellant’s detention – pending
deporation proceedings – was not valid for the entire period of his imprisonment given the
authorities’ lack of sufficient diligence in implementing this measure. The appellant was
awarded damages for this breach. The appeal contained complaints under Art. 5, § 4, which
was declared inadmissible, because the applicant did not exhaust the domestic remedies

45 CRPD. Deinstitutionalization Guidelines available in English at: https://www.ohchr.org/en/documents/legal-
standards-and-guidelines/crpd5-guidelines-deinstitutionalization-including.
46 The law assumes that once placed in an institution, they have received everything they need. Cf. Art. 9,
par. 2 of the Personal Assistance Act.
47 ECtHR. Ali Reza c. Bulgarie, No. 35422/16, Arrêt du 17 mai 2022, available at:
https://hudoc.echr.coe.int/eng?i=001-222633.
provided for in Art. 2, para. 1 of the Law on the Liability of the State and Municipalities for Damages, according to which compensation can be claimed in the event of a violation of Art. 5, § 1 - 4 of the Convention and under Art. 3, 8 and 13, but the Court accepts that the basis of Art. 37, § 1b of the Convention and the complaint should be deleted from the list of cases because the expulsion order was not executed.

The case I.G.D. vs. Bulgaria\(^\text{48}\) refers to the placement of a minor boy with deviant behavior in a (SEBS), to the lack of adequate psychological and educational care in this institution and the impossibility of terminating the correctional measure except at the request of the local Committee for Combating Anti-Social Behavior of Minor and Juvenile Persons, as well as to the boy’s violated right to family life due to the impossibility of effective contact with the mother and the lack of an effective domestic legal remedy. The ECtHR found violations of Art. 5, § 4, Art. 8 and Art. 13 in connection with Art. 8. The complaint for violation of Art. 5, § 4 is due to the fact that the legislation does not provide for the possibility of carrying out periodic judicial control over the placement in specialized educational institutions, which is a form of imprisonment. The court found that judicial oversight exists only in connection with the initial placement in such an institution, however, the Anti-Social Acts and Crimes of Minor and Juvenile Persons Act does not provide for the possibility of minors appealing to the court with a request for a review of the correctional measure. Such an opportunity is granted only to the local Committee for Combating Anti-Social Behavior of Minor and Juvenile Persons. The ECtHR emphasizes that a similar measure such as placement in a SEBS, although undertaken with a correctional purpose, has an impact on the emotional, mental, social and cognitive development of the child or adolescent. Therefore, it is of paramount importance that the national judicial system provides for periodic judicial review of the legality of such a measure, which is carried out regularly enough. This periodicity should allow the courts to quickly prepare adequate decisions, tailored to the situation of the minor, and thus protect them against any prolongation of imprisonment when alternatives can be found. The court reminds that it is the duty of the authorities to ensure that the detention of a minor should be a measure of last resort and aims to prevent serious risks in their development. When this criterion is not met, imprisonment loses its justification. The other complaints are under Art. 8 and Art. 13 in connection with Art. 8. The applicant claims that his placement in SEBS and the lack of effective contact with his mother constituted a violation of his right to private and family life. In addition, he complains that these individual aspects were never considered by the national authorities in the course of the implementation of the correctional measure. The ECtHR concluded that the applicant’s placement in SEBS constituted an interference with his right to private and family life. This intervention was provided for in the Anti-Social Acts and Crimes of Minor and Juvenile Persons Act and pursued a legitimate objective. However, as regards its necessity in a democratic society, it reminds that the best interests of the child require national authorities to adopt the least restrictive measures possible when the exercise of the right to respect for family life is affected. Instead, the administrative authorities which

appealed to the national courts focused mainly on the mother's capacity to carry out her parental duties and provide a stable family environment. Finding the lack of sufficient capacity, they recommended the most severe measure (institutional placement) instead of looking for other, less serious ones that could strengthen the applicant's family life. There is also no explanation why such measures would not be effective.

Chapter 5. Independence of the Judiciary and Fair Trial

2022 was a turbulent year of events in the field of judicial power. The most significant achievement remains the closure of the specialized justice system, which was also received positively by the European partners despite the repeated claims of the Prosecutor General that this is how the oligarchy guarantees peace or that this serves Russian interests. Another significant topic remains the struggle for the implementation of judicial reform, although it was not crowned with success during the year, due to its late start, among other reasons. The Prosecutor General has cemented his place as a media star thanks to his personal PR and a comfortable position of unchecked power - despite his numerous appearances, including in front of children, achievements in the fight against corruption are lacking, and the synchronicity between the Prosecutor General and the so-called parties of the status quo is increasingly visible. For a short time during the year, the position of the Prosecutor General was shaken due to the broken cooperation with the Ministry of Internal Affairs during the tenure of Boyko Rashkov and only briefly by the acting minister Ivan Demerdzhiev, but Ivan Geshev quickly regained supremacy over the investigative bodies. The rest of the events in this sphere remain in the shadow of the struggle between the unrealized judicial reform and the preservation of power.

Closure of Specialized Justice Institutions

On 14 April 2022, the National Assembly, after prolonged debates, adopted amendments to the Law on the Judiciary, which closed down the Specialized Criminal Court, the Appellate Specialized Criminal Court, the Specialized and Appellate Specialized Prosecutor's Offices, and the Sofia City Court and the Sofia Court of Appeals (SCA) became the respective successors to the assets, liabilities, rights and obligations of the closed courts and continued hearing the cases of the relevant phase. The changes were supported by the ruling coalition, as well as by "Vazrazhdane", and only GERB and DPS voted against. On the same day, the Prosecutor General announced that the changes are in contradiction with the Constitution and called them a "legal disaster", and on 4 May this year submitted to the CC a request to declare the texts related to the closure of the specialized court and prosecutor's office, as well as the texts regarding the quotas for reassignment of magistrates, as unconstitutional. The CC decided

that the envisaged regime for the reassignment of judges, prosecutors and investigators from the specialized criminal courts and prosecutor’s offices infringes on the independence of the judiciary and therefore contradicts Art. 117, para. 2 of the Constitution, and rejected the request in respect of the remaining provisions. The closure of the specialized institutions became a fact as of 28 July 2022, but the magistrates were reappointed at their request, without observing the quota principle, and this allowed the "flooding" of the Sofia City Court and the CSA with "specialized" judges, and the entire upper echelon of The Specialized Criminal Court was moved to the Administrative Court - Sofia-city (ACSC) - an effect that had to be avoided in order for the independence and impartiality in deciding the cases to be guaranteed.

Accountability of the Prosecutor General

The CC also rejected another request of the Prosecutor General - against texts from the Regulations for the organization and activities of the National Assembly (promulgated SG No. 109 of December 21, 2021). In his request, Geshev did not agree with his regular hearing before the Committee on Constitutional and Legal Affairs in the 47th National Assembly, which can also make recommendations to the work of the prosecutor's office and the Prosecutor General. According to him, the attacked provisions extend parliamentary control and thus undermine the independence of the judiciary and the principle of separation of powers. The CC decided that “[t]he field of crime fighting is not reserved solely for the prosecution and investigation bodies and Ministry of Internal Affairs. In a parliamentary republic, there is also a place in this sphere for the state-wide representative body - the National Assembly”. The opinions of the Supreme Administrative Court and the Supreme Administrative Court (SAC), which were mutually exclusive, made an impression. Unlike the SCC, the SAC was of the opinion that it is inadmissible for the country’s Prosecutor General to report every three months to the parliamentary committee, and giving recommendations, according to the judges of the SAC, is an inadmissible imputation of obligations by the legislature to the judiciary, and thus functions of the judiciary are seized. The Prosecutor General had also made such a request to the CC regarding the Rules for the organization and activities of the previous 46th National Assembly, but it was dismissed due to its dissolution.

Earlier in the year, the Prosecutor General also disputed before the CC the transfer of the management of the long-term assets from the Bureau for the Protection of Endangered Persons to the Ministry of Justice. Up to that point, the properties were managed by the Plenum of the Supreme Judicial Council (SJC), and even between the first and second reading of the bill for the protection of persons at risk in connection with criminal proceedings, the Prosecutor General undertook a large-scale transfer of expensive cars from the Bureau to the

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50 CC. Decision No. 7 of 14 July 2022 on case No.9 of 2022, available at: https://www.concourt.bg/bg/Cases/Details/616.
51 CC. Decision No. 6 of 12 July 2022 on case No.6 of 2022, available at: https://www.concourt.bg/bg/Cases/Details/613.
Prosecutor's Office. The CC did not see any unconstitutionality in the transfer of asset management from the judiciary to the executive branch.\textsuperscript{52}

### Petition for the resignation of Ivan Geshev

The topic of the resignation of Prosecutor General Ivan Geshev was all the news in the first months of 2022, after at the end of 2021 the Prosecutor General presented a bouquet to the incoming Minister of Justice, Nadezhda Yordanova, and she replied that they should discuss the conditions for his resignation.\textsuperscript{53} The replacement of Ivan Geshev as Prosecutor General and of Sotir Tsatsarov as chairman of the Commission for Combating Corruption and Confiscation of Illegally Acquired Assets (CCUAAFC) were included in the coalition agreement of the Petkov cabinet. Already at the beginning of the year, Minister Yordanova stated that Geshev should free the judiciary from his presence in it and that work is underway to correct the National Recovery and Resilience Plan in the part about the rule of law. A key point is precisely the mechanism for the investigation of the Prosecutor General.

The chairman of the parliamentary group of the PP in the 47th National Assembly, Andrey Gyurov, read a statement on behalf of the ruling coalition, calling on the Prosecutor General to resign and thus take responsibility for his actions and allow the prosecutor’s office to exercise its constitutional functions. GERB, DPS and "Vazrazhdane" did not support the declaration and a number of their representatives spoke against it, with Hamid Hamid defining it as a circus, buffoonery, petition and nothing.\textsuperscript{54}

Puzzlingly, the actions of the ruling coalition were mainly focused on personnel changes, and the topic of judicial reform became more activate later. MP Stanislav Balabanov from ITN even determined that if Geshev does not submit his resignation, the ruling party will tackle the judicial reform.\textsuperscript{55}

At the beginning of the year, the CC accepted that the Minister of Justice could raise the issue of the removal of the Prosecutor General before the SJC, after in 2021 the SJC refused to consider Minister Stoilov’s proposal for the early removal of Geshev from his post.\textsuperscript{56} A little later, the SAC reopened the case to remove the Prosecutor General and returned the file to the SJC, obliging the authority to rule on the merits.\textsuperscript{57} In addition to Minister Stoilov’s request, Minister Yordanova also submitted to the SJC additional reasons for the early removal of

\textsuperscript{52} CC. Decision No. 2 of 17 February 2022 on case No.20 of 2021, available at: https://www.constcourt.bg/bg/Cases/Details/606.

\textsuperscript{53} Even a bouquet did not save Geshev from a request for his resignation, Sega Newspaper, 16 December 2021, available at: https://www.segabg.com/node/201242.

\textsuperscript{54} The request for Geshev’s resignation was met with applause, the prosecution saw a violation of the right of law, Dnevnik Newspaper, 14 January 2022, available at: https://www.dnevnik.bg/4302843.

\textsuperscript{55} Ibid.

\textsuperscript{56} CC. Decision No. 1 of 8, February 2022 on case No. 17 of 2021, available at: https://www.constcourt.bg/bg/Cases/Details/603.

\textsuperscript{57} Ruling No. 1674of 22 February 2022 of the SAC, 6th Dept., under administrative case No. 9025/2021
Geshev, which were based on cases covered by the media, although it was not clear how they would be based on them.\textsuperscript{58} The SJC rejected Yordanova’s request in part because it found that events prior to Ivan Geshev’s inauguration as Prosecutor General were irrelevant.\textsuperscript{59} Minister Yordanova contested the decisions of the SJC Plenum before the SAC, which finally ruled on 29 June 2022, confirming the SJC’s opinion that events prior to the inauguration of the Prosecutor General are irrelevant and cannot serve as a basis for requesting his early removal.\textsuperscript{60} The SJC waited for the SAC’s final ruling and voted on the merits of the two requests only on 7 July 2022, when the vote seemed a foregone conclusion given the SAC decisions and the resignation of Kiril Petkov’s cabinet, as well as the solid majority in the SJC unreservedly supporting the Prosecutor General and resorted to all sorts of procedural tricks to delay substantive votes, to adopt a tone that was unacceptable for the prestige of the judiciary and to substitute the actual topics for discussion.\textsuperscript{61} Thus, the whole saga with the requests of two former ministers of justice for the early removal of the Prosecutor General lasted more than a year and involved significant state resources. Given the position of the Prosecutor General in the Bulgarian judiciary, it remains puzzling why two ministers of justice directed such large resources to a battle that was doomed from the start, and proceeded to real judicial reform afterwards.

Unlike Ivan Geshev, Sotir Tsatsarov hastened to resign as chairman of CCUAAFC after the National Security Agency revoked his access to classified information.\textsuperscript{62} Tsatsarov was quickly appointed head of the Regulatory Analysis Section at the Supreme Cassation Prosecutor’s Office (SCPO) - specially created for him just before that, which Geshev took care of by increasing the establishment plan posts at the SCPO.\textsuperscript{63}

**Mechanism for control and accountability of the Prosecutor General**

The first months of the year caused many to be surprised by the fact that the ruling coalition did not immediately introduce its bill for the introduction of a mechanism for the investigation of the Prosecutor General - the so-called judicial reform. The expectation was that this coalition would not last long in power, and the fragile majority in parliament had to be used. The reason for the delay was that in the National Recovery and Resilience Plan,

\textsuperscript{58} Nadezhda Yordanova submitted the request for dismissal of Geshev, Mediapool, 2 March 2022, available at: [https://www.mediapool.bg/nadezhda-yordanova-vnese-iskaneto-za-uvolnenie-na-geshev-news332879.html](https://www.mediapool.bg/nadezhda-yordanova-vnese-iskaneto-za-uvolnenie-na-geshev-news332879.html).


\textsuperscript{60} Ruling No. 6451 of 29 June 2022 of the SAC, five-member panel, pursuant to Administrative case No. 5410/2022.


\textsuperscript{62} The Parliament accepted the resignation of Sotir Tsatsarov. He returns to the prosecution on 1 March Free Europe, 2, February 2022, available at: [https://www.svobodnaevropa.bg/a/31683240.html](https://www.svobodnaevropa.bg/a/31683240.html).

increasing the accountability and responsibility of the Prosecutor General was set as a measure to be implemented in the fourth quarter of 2022. However, the delay in the work on the reform was of key importance for it not to take place during the period of work of either the 47th or the 48th National Assembly.

Minister Yordanova issued an order for the convening of a working group to draft the necessary amendments and additions to the Penal Procedure Code and the Judicial System Act only on 8 April 2022. The working group was headed by Deputy Minister of Justice Emil Dechev, and representatives of all stakeholder institutions, as well as non-governmental organizations (NGOs). Work continued until 23 June 2022, when the working group formulated specific proposals proposals. At the end of July 2022, the draft law was sent by the resigned minister Yordanova to the Venice Commission for an opinion. It was surprising that some of the texts in the Draft law amending and supplementing the Code of Criminal Procedure (CCP) were more restrictive than what was approved in the working group – for example, regarding judicial review of refusals to initiate pre-trial proceedings.

The Venice Commission announced its opinion on 24 October 2022 after holding consultations with all interested institutions and NGOs. The Commission is of the opinion that with the adoption of these amendments, the responsibility of the Prosecutor General can be strengthened and an important contribution can be made to the reform of the Bulgarian criminal justice system, but at the same time, it considers that the better accountability of the Prosecutor General cannot be achieved only by changing the rules of criminal investigation, but a more comprehensive approach is required, including a review of the institutional structure of the SJC and its prosecutorial panel, as well as limiting the prosecution’s functions outside the criminal sphere.

In the first days of the work of the 48th National Assembly, Nadezhda Yordanova and other members of the parliamentary group of the DB introduced the DLASCCP in its form, in which it was sent for consultation with the Venice Commission. The Acting Minister of Justice Krum Zarkov waited for the opinion of the Venice Commission, his team revised the bill accordingly, the updated version of which was published on the Public Consultation Portal in early December 2022. The Council of Ministers submitted this version of the DLASCCP to the National Assembly on December 30, 2022. Other parliamentary groups and MPs also

introduced their own bills related to the responsibility of the Prosecutor General. In early 2023, two hearings were held in the Committee on Legal Affairs, in which the Attorney General and his supporters played a major role, while the supporters of the Council of Ministers bill had a limited opportunity to speak and present their views. A debate on the merits of the changes was not held, and the personality of Ivan Geshev was again in the foreground; he tried to push the idea that this was a bill written for himself, belittling the need for reform in this way. During the second discussion of the first reading of the DLASCCP in the Legal Affairs Committee on January 19, 2023, MP Branimir Balachev from the GERB-SDS parliamentary group expressed the opinion that there is no need at all to reform the figure of the Prosecutor General, since the decision of the ECtHR on *Kolevi v. Bulgaria* refers to an isolated case, and the murdered prosecutor Nikolay Kolev "deserved" the murder. The chairman of the commission's meeting, Radomir Cholakov, also from the GERB-SDS group, immediately had these words struck from the minutes.

The bill of the Council of Ministers was accepted in the Committee on Legal Affairs in the first reading "as a gesture" to the acting minister Zarkov. At the first reading in the plenary hall, the National Assembly supported four options, which had to be combined into one general bill. The MPs' united support for the DLASCCP, submitted by Vazrazhdane MPs, in which the role of investigating the Prosecutor General is given to the National Investigation, although this cannot guarantee the independence of the investigation, made an impression. Before a general bill could be drawn up by the Law Commission, the president dissolved the 48th National Assembly and scheduled new parliamentary elections due to the impossibility of forming a regular government.

**Media appearances and initiatives of the Prosecutor General**

In 2022, the Prosecutor General continued to be in the focus of media and public attention, with numerous appearances and declarations that could be better qualified as political statements, rather than executing his job of methodological guidance of prosecutors in Bulgaria. With his typical condescending and derisive manner of speech, Ivan Geshev constantly substitutes the conversation about the need for judicial reform, which, among other things, aims at introducing a mechanism for control and accountability of the figure of the Prosecutor General, with a so-called by Geshev "legal" reform. Geshev’s proposed legal reform is focused on amendments to the PC and the CCP, prepared by ad hoc experts, hired by him, including his current adviser Nikola Filchev. These amendments are intended to concentrate even more power in the hands of the Prosecutor General and are shifting the

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69 Mr. Balachev, what murder victim deserved to be murdered?, *Capital* Newspaper, 20 January 2023, available at: https://www.capital.bg/4440879/.
public debate away from reviewing some basic government structures. Further to the peculiar media promotion of his "legal" reform, Ivan Geshev launched the *Justice in the Future – Prosecutors and Students Speak about Law* Initiative, organized by the Association of Prosecutors in Bulgaria and the Chamber of Investigators in Bulgaria. Within the framework of this initiative, Ivan Geshev, together with prosecutors and investigators, have been visiting schools across the country and holding talks with students, usually from the upper secondary but also the lower secondary school level. Students get introduced mainly to the personality of Ivan Geshev and his views on changes to the legislation. Some of the propositions that Geshev puts forward before students are inadmissible in the democratic legal order and represent involvement of children in political activity. None of the responsible institutions have found Geshev's behaviour in front of students problematic, although allegations did appear in the media about them being forced to attend these meetings.

**Expired mandates**

Many institutions either remained incomplete or their panels continued to work with the expired mandate of their members. Of particular concern is the case of the Inspectorate of the SJC, which has been working for more than 2 years with an expired mandate, and the CC consolidated this situation by resolving that, with the expiration of the period for which they were elected, the Inspector General and the inspectors in the Inspectorate of the SJC shall continue to perform their duties, until the National Assembly elects new ones. The CC itself is working with only 10 out of 12 judges, after two seats remained unfilled by the 47th and 48th National Assemblies. The CC is the only institution whose members terminate their work with the expiry of the term for which they were elected, due to the explicit text of Art. 148, para. 1, item 1 of the Constitution. Nearly 70 institutions remain at work with expired mandates of their members and have become hostages of political backstage agreements. Among them are the Bulgarian National Bank, the Commission for Protection against Discrimination (CPD), the SJC, the Commission for Personal Data Protection, CCCCIAP, and the National Social Security Institute, to name but a few. Despite calls for timely election addressed to each newly formed National Assembly, MPs in most cases do not even nominate new members for these bodies, unless they have reached a preliminary agreement that a proposed member will garner sufficient support. When authorities continue to work under an expired mandate, the democratic exercising of power is eroded and it is in violation of the principles of lawfulness and the rule of law.

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On 13 July 2022, the European Commission announced its Rule of Law Report. The report was yet again critical of Bulgaria, on several points: the lack of convictions for high-level corruption, CCCCIA’s inaction, and the lack of transparency in media ownership. The European Commission also paid serious attention to the lack of control of the Bulgarian Chief Prosecutor and the absence of a mechanism for accountability and investigation of possible crimes committed by him/her. The Commission noted that the government (meaning Petkov’s cabinet) had committed in the Recovery and Resilience Plan to create such a mechanism and to reduce its influence on the SJC. Special attention was also paid to the expired mandates of the members of the SJC and the Inspectorate of the SJC, which cannot be filled in the event of a dissolved parliament. The Commission also noted the doubts regarding the independence of magistrates, especially in the absence of regular competitions for promotion and the many temporary transfers of judges, which in practice circumvent the legal promotional procedures.

In 2022, GRECO – the Group of States Fighting Corruption of the Council of Europe – monitored the situation in Bulgaria and held meetings with a wide range of participants, including representatives of the non-governmental sector. On 19 January 2023, GRECO announced its conclusions, finding that the contrast between the perception of corruption in the country and the extremely few convictions for corruption was shocking. The group also made important conclusions about the state of the rule of law in Bulgaria, noting the impunity of the executive power; problems in the way property declarations of senior officials are checked; nontransparency regarding political cabinets and advisers, and so on.

Elections for SJC members

In 2022, elections were held to fill the judicial and prosecutorial colleges of the SJC. The magistrates voted to maintain the status quo. Chiefs were elected in both colleges, not a single ordinary judge was elected to the judges’ chamber, and Deputy Prosecutor General Krasimira Filipova won the most votes for the prosecutorial college. The judges challenged the electronic voting before the court, as the system had many vulnerabilities, which had been reported on a number of occasions before the elections. At the beginning of 2023, a triple forensic-computer-technical investigation was conducted and revealed some startling data: 200 votes were cast by the SAC building on Saturday morning, with requests to the system being submitted at short intervals, one after the other; On Sunday, there was again a cluster vote in


the afternoon. Thus, doubts about an orchestration of the judges’ vote were confirmed. In 2023, it remains to be seen whether the court will censure the elections to the judges’ chamber.

**Other elections**

In 2022, the election of the President of the Supreme Court of Cassation was held after the mandate of Lozan Panov expired. The Supreme Court judges elected Galina Zakharova as president. The European Delegated Prosecutors’ panel, however, remained incomplete after the Prosecutorial College of the SJC failed to propose to Laura Kovesi enough candidates for approval. She, in turn, announced her intentions to increase the number of prosecutors for Bulgaria from 10 to 15 because of the serious workload.

**ECtHR judgments in cases against Bulgaria on the right to a fair trial**

In 2022, the ECtHR examined several cases against Bulgaria connected with the right to a fair trial under Article 6 of the ECHR. In May, in the judgment on the *case of Dimov v. Bulgaria*, the ECtHR found violations of the right to a fair trial, which are protected by Article 6, para. 1 and Article 1 of Protocol No. 1 of the Convention, in relation to the fifteen years of non-compliance with a judgment, which recognized a right to restitution, because of the refusals of the agricultural office to carry it out.

At the end of August 2022, the ECtHR ruled on the case of *Corporate Commercial Bank v. Bulgaria* on the complaints of the Executive Directors of Corporate Commercial Bank (CCB) AD, finding a violation of the right to a fair trial under Article 6, para. 1 and a violation of the right to peaceful use of property – Article 1, Protocol No. 1 of the Convention. The ECtHR found that the legislation in Bulgaria, as well as the way it had been interpreted and applied by the Bulgarian court, had deprived CCB AD of due judicial review of the decision to revoke its license, respectively had led to the violation of CCB’s right to a fair trial and hence of the right of ownership. The revocation of the bank’s license was not secured by any guarantees against arbitrariness.

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In the case of Boychev v. Bulgaria of 15.11.2022, the applicant filed a lawsuit against Sofia Municipality and the Ministry of Regional Development and Public Works (MRDPW), claiming that as a result of their inaction he had become the victim of a life-threatening accident. The applicant claimed compensation of BGN 5,000 (approximately EUR 2,500) for non-pecuniary damages and BGN 305 (approximately €152) for property damage. The court awarded the applicant the entire amount claimed for pecuniary damage and part of the amount claimed for non-pecuniary damage. In addition, the court ordered the claimant to pay the defendant public institutions for the work carried out by their legal advisers the total amount of BGN 459.78 (approximately 230 euro) pursuant to art. 78, para. 3 of the Code of Civil Procedure, which states that the defendant must be compensated for any costs corresponding to the rejected part of the claim. The applicant appealed against this decision, arguing that the reimbursable representation costs were excessive compared with the compensation awarded. However, the appeal was rejected by the Sofia District Court and the SCC. The ECtHR found that the national courts had not carried out a proportionality assessment, although they had been asked to do so on the basis of the applicant’s arguments. The Court found that this led to a restriction of the applicant's right of access to a court, which was disproportionate and hence to a violation of Article 6, para. 1 of the Convention.

Chapter 6. Right to respect of privacy and family life, housing, and correspondence

The ECtHR's decision of 11 January 2022 in the case of Ekimdzhiev and others v. Bulgaria outlined in detail the main deepening problems of the Bulgarian legislation and practice of employment of special intelligence means (SIMs). On 4 October 2022, the ECtHR found that the Bulgarian authorities had violated the right to privacy and family life (Article 8 of the ECHR) and to non-discrimination (Article 14 in conjunction with Article 8 of the Convention) of the Roma. At the beginning of 2019, they were expelled from the village of Voyvodinovo, Plovdiv region. In 2022, Bulgaria continued not to undertake legislative changes to ensure that in the event of forced demolition of their only home (although illegally built), victims would be subject to a proportionality test of the measures and alternative shelter would be offered. There was also no government reaction to the interim resolution adopted on December 3, 2020, by the CMCE on the group of ECtHR judgments of conviction in the Yordanova and others versus Bulgaria case due to the systematic refusal of the state to implement the decisions.

Employment of Special Intelligence Means

Significantly reduced use of SIMs

According to the report of the National Bureau for Control of Special Intelligence Means (NBCSIM) for 2021, SIMs were employed with regard to 2,632 persons during the year\(^81\). 4580 requests for the use of SIMs were issued, of which the judges approved 4056 and refused 524. Compared to 2020, the procedures on request for and employment of SIMs in 2021 had decreased by 788 units, or by 14.68%, the permits – by 947 or by 18.93%, and the persons – by 410, or by 13.48%, and for sites – by 43 or 25%. As a result of the implemented SIMs, 1007 pieces of material evidence were prepared. Compared to 2020, their relative decrease was by 82 units, or by 7.53%.\(^82\)

Most requests for the employment of SIMs came from the Ministry of Interior (53.08%) and the Prosecutor's Office (33.86%), followed by requests from the State Agency for National Security (10.02%) and CCCCIAP (0.59%).

In most cases, the requests for the employment of SIMs were with respect to: organized crime groups (1732), drug-related crimes (787), excise goods (197), theft (167) and bribery (104).\(^83\)

In 2021, there were 4056 permits issued for the employment of SIMs (2602 at initial requests and 1454 for extension of validity). Most were granted by the Specialized Criminal Court (2002), followed by the district courts of Plovdiv (350), Stara Zagora (198), the Sofia City Court (120), Ruse (118), Burgas (111). In 2021, at the request of the Prosecutor General, as well as at the request of the Supreme Cassation Prosecutor, 2 SIMs were allowed\(^84\).

In 2021, refusals were issued in 524 cases, which is half of those for 2019 and 2018, with the Specialized Criminal Court issuing the most refusals – 325. Most refusals were issued at the requests of the Prosecutor's Office – 16.31%, the State Agency for National Security – 13.51%, and the Ministry of Interior – 8.39%. The NBCSIM report shows that the main reasons for the refusals are again "absence/insufficient data on the person's involvement in the described criminal activity, lack of data on the presence of an organized criminal group, lack of motives for inability or extreme difficulties in collecting the necessary data without using SIMs, failure to indicate the results achieved in requests for extension of the implementation period".\(^85\)

The total number of authorised methods in 2021 is 11,963. Most wiretapping (in 3,796 cases) and tracking requests (in 3,500 cases) were allowed, followed by such for surveillance (in 3,496 cases) and far less often – penetration, marking, undercover officer and interception

\(^81\) NBXRS. Report of the National Bureau for Control of Special Intelligence Means on the activities carried out in 2021, available at: https://www.nbksrs.bg/media/2919/ annual-of-nbcsrs-for-2021-year.pdf, p. 6.

\(^82\) Ibid., p. 6.

\(^83\) Ibid., p. 11.

\(^84\) Ibid., p. 16.

\(^85\) Ibid., p. 17.
of correspondence. Of all the methods, the most commonly used are also wiretapping, following and surveillance.

As a result of the employment of SIMs, 1007 pieces of material evidence were prepared. The ratio between the number of prepared material evidence means and the number of persons temporarily restricted by the SIMs was 38.26%.86

In 2021, the NBCSIM carried out 291 incidental inspections for unlawful employment of SIMs. There were 142 reports from members of the public, alleging unlawful use of SIMs against them. With regard to 149 persons, the National Bureau was seised of its own motion. 246 of them were completed. Inspections of 33 files have continued in 2022.

Only 7 cases of illegal SIMs during the 2020 mass protests

In May 2021, allegations of illegal employment of SIMs on politicians, representatives and members of political parties, list leaders in the 2021 elections and participants in the mass protests of the summer of 2020 were made public by the media. In this regard, the NBCSIM received 65 alerts from persons who indicated data that illegal SIMs had been implemented to them in their capacity as leaders or members of political parties or participants in the protests of the summer of 2020. On this basis, the NBCSIM has carried out inspections for unlawful employment of SIMs87. On the basis of a letter received from the Ad Hoc Committee for investigation of facts and circumstances in Mol’s use of tear gas, the use of force and auxiliary means on 10 July and 2 September 2020 against protestors, as well as for investigation of facts and circumstances related to the use of SIMs on protestors, opposition leaders and members of political parties from the opposition within the 46th National Assembly of the Republic of Bulgaria, NBCSIM was seised of its own motion with regard to 141 members of the public. From the inspections carried out in seven cases, evidence of unlawful employment of SIMs was established, for which the competent government institutions were notified. Members of the public are to be notified, in compliance with the provisions of Art. 34g of the Special Intelligence Means Act (SIMA).

Only one case for illegal use of SIMs

After a check on the legality of the procedures for requesting, authorizing, and using SIMs, NBCSIM informed one person in 2016 that SIMs had been illegally used against him. On the basis of a claim with legal grounds on art. 2, para. 1, item 7 of the State and Municipalities Liability for Damages Act, the Sofia City Court in 2019 initiated a civil lawsuit for non-pecuniary damages suffered as a result of the unlawful use of SIMs. By decision of 07.04.2021, the court ordered the applicants who requested the use of SIMs against the plaintiff to pay compensation for the non-pecuniary damage suffered by them from their unlawful use.

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86 Ibid., p. 29.
87 Ibid., p. 32.
Legislative proposals submitted to the Ministry of Justice and to Parliament

On 25 January 2021, the Parliamentary Assembly of the Council of Europe adopted Resolution No. 2358 (2021), expressing serious concern about the number of E CtHR judgments whose enforcement has not been completed and has been monitored by the CMCE for more than five years after they were issued. The Republic of Bulgaria is cited as one of the member states of the Council of Europe with the highest number of outstanding decisions. Therefore, in March 2021, an interdepartmental working group was established to prepare a Roadmap for the Implementation of E CtHR Judgments against Bulgaria, with the participation of the institutions responsible for the enforcement of the measures. It contains a detailed list of the violations of the Convention found by the E CtHR in their various judgments of conviction, noting the necessary measures to overcome them, identifying the institutions responsible for them within the executive power, and binding the preparation of related legislative or other proposals to specific deadlines. The NBCSIM has prepared, and submitted to MoJ, its proposals for improving the regime of procedures for the use of SIMs under the current legislation, including by synchronizing some SIMA and CCP texts related to the activities of the authorities using SIMs.

At the end of 2021 and the beginning of 2022, an analysis themed "Use of special intelligence means at the request of the Prosecutor's Office" was prepared. This analysis was developed by a research community consisting of judges from the Supreme Court of Cassation, prosecutors from the Supreme Cassation Prosecutor's Office, the Appellate Specialized Prosecutor's Office, the Appellate Prosecutor's Office of Sofia, and a representative of the NBCSIM and coordinator of the research community, namely Ognyan Stoichkov. The analysis was published on the website of the National Institute of Justice. It contains the following proposals:

1. The provisions of art. 174, para. 5 and para. 6 of the CCP, as well as art. 15, para. 4 of the SIMA, currently in force, contain a highly concerning ambiguity, with the normative texts providing that in such cases, i.e. to persons occupying magistrates' positions, the permits for use of SIMs are granted in advance "with respect to all participants". It is therefore necessary to remove this ambiguity in the wording of this regulation in so far as concerns the persons to whom permission may be given in the discussed hypothesis.

2. In SIMA, the legislator is not entirely consistent in the use of the terms "uses" and "employs", whereby they apparently entail different meanings.

3. There is a lack of consistency between the current requirement of art. 14, para. 1, item 2 of the SIMA to describe in the applicant's request the "results of the preliminary

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inspection” with the fact that the relevant legislation currently does not provide for conducting a "preliminary inspection", which was dropped as an institute of the CCP under the operation of the already repealed CCP. There is therefore an obvious need to synchronize the legal regulation in order to eliminate this problem.

4. To supplement the provision of art. 173, para. 5 of the CCP, by including to the crimes for which it is permissible to employ SIMs against a witness, those under art. 142 – 142a of CC, as well as under art. 213a — art. 214 of CC. The arguments for this are inferable from the relevant part of the study. In particular, they are related to the fact that the crimes under art. 142 – 142a of CC and art. 213a — art. 214 of CC are included in the scope of art. 172, para. 2 of CCP, on the one hand, and on the other – with the fact that at the initial stage of investigation of kidnappings and illegal imprisonment, as a rule, there is no data about the offender and their accomplices, nor is there data on sites through which the identity of the perpetrator and his accomplices could be established, therefore it is not possible to use SIMs under Art. 12, para. 1, item 4 of the SIMA. In this order, the use of SIMs in relation to witnesses in criminal proceedings, who are in close familial or other kind of relations with the victim, is an important source for establishing the circumstances of the act and the perpetrators, and these circumstances at the initial stage of the investigation cannot be established in any other way.

5. It is possible to supplement art. 172, para. 2 of the CCP, by including in the subject scope, in addition to the crime under art. 253 of CC, one other of the serious crimes under Chapter VII, such as, in particular – the one under art. 255 of CC. Currently, the use of the SIM method for tax crimes is not permissible. As commented in Chapter II of the study, in cases where the investigation is for a real set of tax and other crimes under art. 172, para. 2 of the CCP – for example, such as under articles 321, 253, 301 et seq. of the CC, there is no obstacle to the use of SIMs. However, the result of the use of SIMs should not be used in this case to prove a tax crime. Therefore, in order to prevent circumvention of the law, it could be considered to include the crime under art. 255 of CC within the scope of crimes under art. 172, para. 2 of the CCP.

6. There is a contradiction found between the provision of art. 13, para. 4 of the SIMA concerning the prevention of a "non-initiated " crime, and that of art. 14, para. 3, item 1 of the SIMA, which refers to a serious intentional crime of the listed ones, which is being prepared, being committed or has already been committed. This substantial collision between the two provisions could have been resolved by the legislature.

7. Not all information obtained through SIMs is used to prepare material evidence (ME) and it is up to the applicant how much of it is used to prepare ME. Also, according to the practice of the ECtHR, the destruction of materials obtained using SIMs may raise serious questions of violation of Article 6 of the Convention (case Natunen v. Finland, 2009) In this sense, it is proposed to consider a procedure allowing for assessment of what part of the collected information should be destroyed, so as to guarantee the
right of defence of the person rendered liable for the crime. As far as a much more substantial change in the SIM regime is concerned, a preliminary study of legislative solutions in other countries is necessary, as well as a thorough professional discussion of the model to be proposed.

8. Given the specific characteristics of SIMs as a covert method of proof and potentiation of public control, it would be appropriate to introduce requirements for the content of the annual report of the Prosecutor General to the National Assembly, which should contain, in addition to the number of received material evidence (ME) prepared in the employment of SIMs, but also the number of such ME involved in the criminal proceedings; the number of ME used in the demonstration process. The presence of such data would enable an assessment of the actual relevance of the SIMs used in the demonstration process.

9. The research group also insists on the long-standing idea to introduce a unified register of requests, authorisations, and refusals for SIMs.

In 2021, the National Bureau submitted proposals for amendments and supplements to SIMA and CCP, in Parliament. The proposals aimed to improve the procedures for requesting, authorizing and applying SIMs, as well as for storage and destroying the information obtained through them. The proposals concerned the:

1. establishment of terms and conditions for the destruction of the ME, which will not serve the needs of criminal proceedings, and of the ME, which are part of the criminal proceedings.

2. Increase of the ten-day period under art. 31, para. 3 of the SIMA for the destruction of the information under art. 24 of the SIMA, which will not be used for the preparation of ME, and the information under art. 25 of the SIMA, as in many cases it is extremely insufficient.

3. dropping the mandatory text reproduction of the contents of ME in the memorandum of its preparation – item 4 of para. 2 in art. 132 of the CCP and item 4 of para. 2 in art. 29 of SIMA, to be repealed.

4. dropping the requirement regarding the granting of an order by the authority under art. 174 of CCP for the destruction of information collected during the use of SIMs and not used for the preparation of ME – repealing sentence 2 of art. 175, para. 7 of CCP. Destruction to be carried out in compliance with SIMA.

On 28.10.2022, the NBCSIM held a working meeting with the authorities under art. 15 of the SIMA. The meeting was aimed at overcoming the gaps identified by the supervisory authorities, seeking solutions to the problems raised and bringing uniformity to the practice in the application of the procedures laid down in the CCP and the SIMA. As a result of the
discussions, an agreement was reached on decisions related to judicial control on the request, authorization, and employment of SIMs:

- to justify the impossibility of collecting the necessary data in any other way or a description of the exceptional difficulties involved in their collection;

- to motivate the need to employ operational methods;

- to justify the duration of the period of application;

- the authorisation to use SIMs should not allow a change in the legal classification of the offence for which the request has been made;

- to observe the 48-hour deadline for ruling on requests for the use of SIMs;

- The crime under art. 321 of CC is an independent basis for requesting and authorizing the use of SIMs. The specific enforcement act of the criminal activity for each of the persons should be indicated, and the time and place of its implementation should be specified as well.

If there is evidence of any secondary criminal activity carried out in aggregate with the formation/management of/participation in an organised criminal group, the request and authorisation should contain facts and circumstances about such activity.

- the enforcement body to make a request to the authority under art. 13 of SIMA, with a copy to the authority under art. 15 of SIMA, to take action under art. 23 of SIMA or under art. 22, para. 2, item 2 of SIMA in respect of a communicator who is not used by the person for whom permission to use the SIM has been granted;

- there should be no interruption between the initial request for the use of SIMs and the request for its extension. When determining the commencement date of extension of the period for the employment of SIMs, the maximum permissible statutory period of 6 months (3 years for activities related to national security) should not be exceeded;

- from the period of SIM employment with respect to a designated person, the period under the applied procedure under art. 12, para. 1, item 4 of SIMA for the time during which the same person was being controlled, should be deducted. The information should be provided by the applicant upon request, on the grounds of art. 12, para. 1, item 1 of SIMA;

- to establish a unified information system for judicial acts issued on requests for the use of SIMs.
Forced evictions of Roma from their homes

Despite the new ECtHR judgment in October in the case of Paketova and Others v. Bulgaria, in 2022, the necessary legal amendments required repeatedly by the CMCE were not made to enforce judgments in cases already adjudicated, concerning the evictions of Roma from their homes. During the year, several such evictions from Roma neighborhoods were reported in various media. In May, the municipal administration of Straldzha began the demolition of illegal houses in Roma neighborhood as a "punitive measure against domestic crime". In December, illegal Roma buildings were once again demolished in Sofia’s Malinova Dolina District. At the end of December, a building was demolished in Plovdiv. Bulgarian law does not require an assessment of the proportionality of such measures and does not provide for alternative accommodation of persons being expelled from their only home.

More and more people without personal ID documents

In 2022, the BHC continued to provide assistance and protection to overcome the effects of mass evictions in previous years. Forced evictions generate an impressive number of individuals with problems in civil registration. The children of parents without a valid permanent address are unable to make their address registration official in accordance with the requirements of the law. As a result, we are witnessing:

| a continuous increase in the number of persons without an identity document: the number of Bulgarian citizens without a valid identity card as of 10 March 2021, is 123,749 people, as of 1 December 2021 – 150,169 people, and as of 15 July 2022 - 187,883 people. A huge number of these Bulgarians are registered at their current address and live in Bulgaria: as of 15 July 2022, they are 109,233 people. |

At the same time, the information about the number of persons with an "invalid" address, according to Mol’s information database, is not being disclosed or provided under the procedure for access to public information – the court proceedings on a complaint against the refusal of the Minister of Interior are pending.

The existence of a large number of Bulgarian citizens without an identity card results from the practice of municipal mayors to delete from the National Register of Current and Permanent Addresses (NRCPA) those addresses, where the illegal constructions subject to

89 See below.
90 In Straldzha began demolition of illegal houses in the Roma neighborhood, Zonanews.bg, 17.05.2022, available at: https://zonanews.bg/regioni/yambol/v-straldzha-zapochna-sabaryane-na-nezakonni-kashti-v-romskata-mahala.
93 The data are provided by the Ministry of Interior under the Access to Public Information Act.
94 See Administrative Decision No. 7257/2022, ACSC, 23rd composition.
demolition were located. This deletion, as well as the demolition itself, are carried out by the municipal authorities, without assessing whether the only dwelling of the affected families has already been taken or is being taken away. The exercise of the powers to delete an address from the NRCPA, as well as the powers to demolish illegal construction, are placed by law entirely in the discretion of the mayors and their implementation is not bound by deadlines.

On top of this questionable legal practice is added the unlawful practice of the MoI authorities to send away applicants whose address is marked as "invalid" in MoI’s information system. Such a reprehensible practice has already been established in several court proceedings, on complaints initiated by the lawyers of the BHC Legal Protection Program.95 With the decisions on these cases, the head of the Bulgarian Identity Documents Department, through his employees in the regional departments, was sentenced to accept the applications submitted by citizens for an identity card.

The situation with some of the victims of these violations is further complicated by the inability of the NGOs providing legal aid themselves to confirm the victims’ identity. Even if they manage to engage a lawyer and with their help to overcome the resistance of the Ministry of Interior employees, by applying for an identity card, the victims’ applications are invariably rejected on the grounds that the address entered in the MoI system appears to be "invalid". These refusals are also illegal and are reversed on judicial review.96 According to the court’s reasoning in its practice in BHC cases since the end of last year,

"the removal of the site where the last permanent address requested by the person is located, on the grounds of order [...] issued by the mayor [...], and the subsequent official procedure in which the address was deleted from the NRCPA do not justify the conclusion that the applicant does not have a permanent address and therefore cannot be issued an identity card. "Deletion of address registration" according to para. 1, item 3 of the Closing Provisions of the Civil Registration Act is an automated restoration of the previous permanent and/or current address of the person [...] even if the only available address of the persons is deleted, according to the law they are still kept in the books at this permanent address, because such is the law – para. 1, item 3 of the Closing Provisions of the Civil Registration Act97.

The BHC has seised both the Minister of Interior and the Deputy Prosecutor General at the Supreme Administrative Prosecutor’s Office about the illegal administrative practices of the

95 ASG. Decision No 6389 of 30.10.2019 on administrative No 12601/2018, Decision No 4501 of 01.07.2019 under administrative case No12602/2018
Ministry of Interior. The Minister undertook to organize a working meeting, while the 
Supreme Administrative Prosecutor's Office agreed to extend a proposal to MoI and MRDPW to improve the organization of their work.

In order to overcome the arbitrary interpretation of the law by MoI, BHC made specific proposals to supplement the Bulgarian Identity Documents Act in the public discussion on the bill for its amending and supplementing in early 2022. The table for comments on the bill contains a refusal to comply with the proposals made, arguing that "there is a real danger that the person will not be informed in a timely manner of any legal proceedings and enforcement procedures taken against them, as well as a risk of preventing activities to establish the existence of conditions for exercising social assistance rights."

The problem is particularly severe, as it disproportionately affects families living around the poverty line, who are subjected to or being threatened with homelessness. Non-possession of an identity card additionally, extremely, and often irrevocably marginalizes Bulgarian nationals who live permanently under restriction of their fundamental rights to education, work, access to healthcare, voting and free movement. Without an ID card, you cannot get married, recognize a child, enter a court building, request social services, receive social benefits, receive life-saving therapy from the pharmacy, conclude a contract with a bank, an employer, an operator of communication services, notary services, etc. Without an ID card, individuals lose their civic identity, they cease to exist in the legal world, they become invisible, and their children become invisible too.

In 2022, in addition to providing legal aid to persons without an identity card, the BHC successfully conducted three lawsuits against the refusals of the Mayor of Serdika District, Sofia Municipality, to issue certificates of address registration. The court found that the removal of addresses from the NCCPA is not an obstacle to the issuance of certificates from the population register.

In 2022, the BHC continued to provide legal aid to people affected by the evictions executed in 2017 at No3, Gradinite Str. in the district of Orlandovtsi. After dozens of winning cases, the families were included in the Serdika district list, but before them remained more than 30 families filed during court proceedings against the municipal administration. Although

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99 ASG. Decision No. 1707 of 15.03.2022 under administrative case No. 12696/2021; Decision No. 6309 of 28.10.2022 on administrative case No12695/2021; Decision No. 3437 of 20.05.2022 on administrative case No. 12694/2021
with the intervention of the court they were placed in the first group as in need of municipal accommodation, the Roma families continue to live in extremely miserable conditions in constructions, subject to demolition and surrounded by an illegal landfill, and some of the people, despite the court cases won at first instance, have remained without an identity document for yet another year.

**ECtHR judgments in cases against Bulgaria concerning the right to privacy and family life, housing and correspondence**

In 2022, the ECtHR issued several judgments in matters relating to the right to privacy and family life, housing, and correspondence. On 11 January 2022, by a decision of the ECtHR in Strasbourg, lawyers Mihail Ekimdzhiev and Alexander Kashumov and two NGOs – the Association for European Integration and Human Rights and the Access to Information Foundation – convicted Bulgaria of violating Article 8 of the ECHR. In their appeal to the ECtHR, they stated, that the nature of their activities puts them at risk of both covert surveillance and access to their communication (traffic) data by the authorities in accordance with the laws permitting this in Bulgaria. They are not claiming that they themselves have been placed under surveillance or that their communication data have been accessed by the authorities, but that the covert surveillance system and the possibility of preserving the intercepted communication under the SIMA, as well as the practice of implementing the legislation, do not provide sufficient guarantees against arbitrary wiretapping or abuse. The other complaint is that judicial review on authorising the use of SIMs is ineffective. Nor is there an effective mechanism for informing individuals that they have been subject to the employment of such intelligence means.

A number of examples of formal, superficial demonstration of the need to apply SIMs have been presented to the ECtHR, in which the deciding justice panel cannot practically control their use. It has also been pointed out that the authority seeking employment of SIMs in pending criminal proceedings is not obliged to disclose to the judge all the issues related to the justification of the access application. If the court finds irregularities, it can only bring the matter to the attention of the prosecutor's office or inform the heads of the relevant authorities requesting access, as well as the communication service providers, but it cannot prevent them. Moreover, the law does not require judges considering such applications to give reasons why they have decided that providing access to the communications data is really necessary. Therefore, the law does not specify in every possible hypothesis, that access in each individual case can be sought and granted only, if the resulting interference with the rights of the person concerned under art. 8 of the ECHR would be really necessary and proportionate.

After being convicted for wiretapping in 2007, again on the appeal of lawyer Mihail Ekimdzhiev, Bulgaria did not take adequate common measures that would lead to overcoming the systemic problems identified by the ECtHR. In the years following the enactment of the
ECtHR decision, the legal hypotheses in which the use of SIMs is permissible, have increased significantly. A new method of covert monitoring of communication through control over the traffic of electronic correspondence was introduced.

The Strasbourg Court recognised that the complaint of hypothetical danger from the legal setup of SIMs and and their employment, was well founded. The Court held that abstract examination of the laws governing access to retained traffic data by the authorities was justified. It rejected the Bulgarian Government’s objection that the applicants could not claim to be victims of violations of Art 8 of the Convention, because of the very existence of such laws.

The court in Strasbourg reviews the overall development of policies and problems around the employment of wiretapping and surveillance, as well as the tracking of traffic data over the past 10 years, which includes legislation, establishment, and operation of the NBCSIM, parliamentary control, statistics on the number of SIMs employed by year and on the authorizations of traffic data, analysis of case law, etc. It is precisely this review that best illustrates how the situation in Bulgaria as a whole has been steadily deteriorating in recent years, while government authorities were simulating compliance with a previous ECtHR decision and improving the control over this activity. Although it recognises that the Bulgarian law on SIMs has been significantly improved since 2007 and that it does not contain serious procedural problems, the ECtHR stresses that the practical application of the procedure for authorising the use of SIMs by the courts is not able to ensure that recourse is made to surveillance only when it is "necessary in a democratic society", primarily because of the judge's lack of effective assessment of the materials on which the request was based.

Regarding the use of traffic data, the Court found that according to Bulgarian law, all communication service providers in the country must store all traffic data of all their users for six months in order to be able to provide such data to the authorities for certain law enforcement purposes. Various authorities may have access to this data. The ECtHR infers the principle that the general storage of communication data by providers of such services, and access to them by the authorities in individual cases, must be accompanied by the same safeguards against arbitrariness and abuse as the use of SIMs. However, Bulgarian legislation does not meet these minimum guarantees in the following respects:

- the procedure for authorising such access is not capable of ensuring that the authorities have access to the retained communication data only where this is “necessary in a democratic society”, since requests in the course of criminal proceedings are not required by law to be justified and supported by evidence and, accordingly, by such an assessment by the judge;

- no clear time limits have been set for the destruction of data accessible by the authorities in the course of criminal proceedings;
• there are no publicly available rules for the storage, access, verification, use, communication and destruction of communications data accessible by the authorities;

• the supervisory system, as currently organised, is not capable of effectively verifying abuse;

• the notification requirements currently in force are too limited;

• there is no evidence of any existing effective remedy.

Regarding the NBCSIM, the ECtHR found the following: there are insufficient guarantees of independence of the Bureau from the services it is meant to control (its members come out of these services and then go back to them); the services have control over the members of the Bureau through the procedure for access to classified information; the members of the Bureau do not have the necessary qualifications (among them there is currently only one lawyer); it does not have sufficient access to information in the course of inspections or powers for mandatory instructions.

The ECtHR found a violation of art. 8 of the ECHR with regard to the employment of covert surveillance (tracking) and with regard to the preservation of access to traffic data collected through SIMs.

In February, the ECtHR ruled on the case of Pavlovi v. Bulgaria. It concerns an alleged lack of respect for the applicants’ family life as a result of non-compliance with final judgments granting some of the applicants the right to personal contact with the second applicant, who is their daughter and granddaughter, respectively. The ECtHR found that there had been a violation of Article 8 of the Convention. The Court noted that although the child’s father and grandparents saw the child by accident, after the judgments of 12 March and 17 April 2014 had been delivered, they were unable to exercise their rights to personal contact for many years, even though they had been active in the enforcement proceedings initiated, and sought assistance from the authorities. Over the period, a number of institutions had intervened to varying degrees and with varying intensity. However, the measures taken were not sufficient, adequate or timely for the enforcement of court decisions and for the restoration of the relationship with the child, both of which were in the best interests of the child according to various institutions, starting with the courts. The bailiff did not regularly impose fines on the mother for non-compliance with court decisions. The police warned the mother about her obligations under the law, and the prosecutor’s office considered every complaint against her separately and in most cases refused to initiate criminal proceedings. In 2018, the Sofia District Court acquitted the mother of charges in three criminal proceedings that reached the court phase. The ECtHR considers that social services should have played a

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decisive role in examining the specific circumstances. The father and child were jointly awarded 5,000 euros in compensation, and the grandparents -- 3,000 euros.

In August, the ECtHR ruled on the case of *Hristova and others v. Bulgaria*. In that case, it was for the Court to decide whether there had been a violation of Article 6, para. 1, and Articles 8 and 13 of the Convention. According to the facts of the case, on 26 March 2015 the police searched the applicants' villa without a warrant from a judge. A criminal investigation was opened against one of the applicants for illegal possession of weapons and ammunition. A Montana District Court judge approved the search and confiscation. Assessing in general, that the items sought could easily be moved or concealed, he considered it an emergency, where the search was the only means of gathering and preserving evidence, and found that the procedural rules had been followed. The District Prosecutor's Office terminated the criminal proceedings because it considered that there was insufficient evidence. The ECtHR referred to previous judgments on matters in Bulgaria, finding their circumstances identical a posteriori to the present case. In these cases, violations of Art. 8 had already been established in the absence of prior authorization or effective control over the legality and necessity of the searches carried out. They had not been accompanied by sufficient guarantees against arbitrariness and therefore could not be considered as "provided for by law" within the context of Art. 8 of the Convention. The Court also considered that the assessment of the urgency of the search had been carried out in a stereotyped manner, without any specific argument relating to the circumstances of the particular case. The ECtHR considered it unnecessary to rule on art. 6, para. 1 of the Convention and agreed that there had been a violation of art. 8 and 13 of the Convention.

In September, the ECtHR ruled on the matter of *P.H. v. Bulgaria*. In it, the applicant argued that the treatment of sex change in the Bulgarian legal system and the courts' refusal to recognise the gender, with which she herself identified with, violated her rights under the ECHR. The applicant, who knew from childhood that their gender was female, but that did not correspond to the male gender recorded at birth, underwent hormone therapy as part of the sex change process and requested for her name, family name and surname, gender and civil registration number in electronic registers to be changed to reflect their declared gender. The District Court initially granted the motion, but the decision was reversed on appeal by the prosecution. The prosecution argued that the applicable law did not allow the requested change because “the concept of 'gender' is based on biological conditions established at birth and cannot be changed”. The District Court held that it was not possible to interpret the concept of ‘gender’ otherwise than as defined in the Constitution and legislation, and that this interpretation was justified by Bulgaria’s Christian roots and the identity, established over the centuries. The ECtHR examined whether Bulgaria had found a fair balance between the public


interest and the applicant's private interest in obtaining a change in civil status. The court found that in reversing the District Court's judgment, which dismissed the petitioner's claims, no weight was given to petitioner's arguments and that the opposite gender of the one entered at birth was not legally recognized. The court concluded that the District Court had unreasonably violated the applicant's right to privacy by refusing to acknowledge her stated gender without sufficient and relevant reasons. According to the ECtHR, the lack of balance between the applicant's personal interests and the public interest in the context of the divergent case-law of the SCC shows the rigidity of reasoning on the recognition of gender identity. The Court also noted that the SCC had not yet completed the procedure for issuing an interpretative decision in the field of legal gender change and that it is necessary to refer to the recommendations of international bodies such as the Council of Europe, as well as the UN High Commissioner for Human Rights on measures to combat discrimination, based on sexual orientation or gender identity. As a result, the Court found that there had been a violation of art. 8 of the Convention.

By its decision of 4 October 2022 in the matter of Paketova and Others v. Bulgaria, the ECtHR found that Bulgarian authorities had violated the right to privacy and family life (Article 8 of the ECHR) and to non-discrimination (Article 14 in conjunction with Article 8 of the Convention) of the Roma who in January 2019 were expelled from the village of Voyvodinovo, Plovdiv. At the time, Bulgarian citizens were forced to leave their only homes and the village because of their Roma origin. This happened with the joint efforts of local authorities and representatives of the Government of the Republic of Bulgaria. The expulsion was provoked by a fight occurring in the afternoon of 6 January 2019 in a village street, between two Roma and V.D., a 33-year-old commando of the special forces. As a result, V.D. was hospitalized for several days. The perpetrators were immediately arrested, charged and in early April 2019 sentenced to different terms of conditional imprisonment. The incident sparked anger among locals, who gathered at 6 p.m. on the same day for a protest in the center of the village. Radical racist groups from Plovdiv joined the protest actions. Police and gendarmerie from Plovdiv also arrived on the spot to ensure public order. Protesters roamed the streets of the village, chanting anti-Roma slogans. Around 22:00 the mayor of the village went to the Roma neighborhood and told all Roma to leave the village immediately. Several residents of the Roma neighborhood called taxis from Plovdiv, as well as relatives with cars, and left in panic. Some of the inhabitants failed to move out, hid in the houses in the neighborhood and left the village over the following days. A total of about 100 Roma deserted the village, leaving the Roma neighborhood completely uninhabited.

In the following days, the protests in Voyvodinovo continued with explicit demands for the permanent expulsion of all Roma from the village and the demolition of their homes. In the course of the protest, participants chanted racist slogans. During the culmination of the protest on 11 January 2019, many former and current military personnel, colleagues of the

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victim, as well as over 100 fans of various football clubs took part in it. The crowd criticised the mayor of the Maritsa district for "not taking decisive measures against gypsy arbitrariness". Two days after the incident, on 8 January Deputy Prime Minister Krasimir Karakachanov of the ultranationalist party Internal Macedonian Revolutionary Organization – Bulgarian National Movement (VMRO-BND) visited the village. There, he ordered the immediate "clearing" of illegal buildings in Vojvodinovo and declared: "The gypsies in Bulgaria have become extremely insolent and the tolerance of Bulgarian society is exhausted." Subsequently, all buildings in the Roma neighborhood were declared illegal and subject to removal. Previously, by order of the mayor of the Maritsa district, the water supply and electricity in them had been cut off.

At the end of January, the applicants, frustrated with life among relatives, friends and in abandoned buildings, decided to return to their houses in Vojvodinovo. However, they were not allowed to their homes by the mayor of the village, the police and the locals gathered.

In its judgment of 4 October 2022, the ECtHR noted that the crowd chanted [derogatory names] "mangali" ['charcoal-pans'] and "marshi" [metaphorical ‘black sheep’]; that there was at least one slogan with the inscription "This is Bulgaria, not Gypsyland"; that protesters, while being interviewed by the media, called on ethnic Bulgarians to unite and take matters into their own hands, if the authorities did not meet their demands; that among the protesters came many football fans from other settlements, chanting "Let's say no to Gypsy lawlessness"; and that on January 11, 2019, a group of Bulgarian academics sent an open letter to the authorities in support of the actions of Deputy Prime Minister Karakachanov.

The ECtHR stresses that the Roma from the village were exposed to a situation that caused fear in them, and that at a later stage they could not return to the buildings, which were in fact their only homes, regardless of their status as illegal. The Court also paid particular attention to the fact that Deputy Prime Minister Karakachanov made highly stigmatizing statements concerning Roma ethnicity collectively, which had been broadcasted by the media just two days after the incident; and similar statements were made by the mayor of the village of Voyvodinovo.

The court noted that the mayor of the village did not seek the assistance of the police to ensure the return of the evictees to their homes, nor did he give them information about social services or other assistance to provide shelter. On the basis of all this, the ECtHR found that the cumulative effect of the inaction of the various competent authorities – the mayors, the police and the public prosecutor's office – led to a situation in which all the applicants were expelled from their home, and that failure to act was not sanctioned in national proceedings.

The case **V.I.R. and A.V.R. v. Bulgaria**104 concerns the adoption of a child without the consent of her biological mother. The complaint under Art. 8 was found admissible, but the

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ECtHR found no violation. The applicants were the mother and her daughter, the latter being raised in social facilities since the age of 4 months, because of her being put at risk by her mother, who was struggling with heroin addiction. Initially, the mother had made attempts to contact her daughter, but these attempts stopped in 2018, and in 2020 the child was adopted. According to the ECtHR, the interference with the right to family life was lawful and pursued a legitimate aim – to protect the best interests of the child. At the same time, it was not disproportionate, since for the whole five years since the birth of the child, the mother did not oppose the child being raised in social institutions and, although she was periodically interested in the child, she showed no desire to raise her herself; in domestic proceedings concerning the placement of the child in a foster family and their inclusion in the adoption register, the mother had the opportunity to take part and was represented.

Chapter 7. Freedom of conscience and religion

In 2022, as in previous years, violations of religious rights in Bulgaria are registered mainly against minority religious communities. During the year, with the exception of one case, no serious attacks against Muslims were recorded, as in previous years. No amendments to the legislation were made to comply with previous ECtHR rulings in several cases against Bulgaria. Two minority Orthodox churches that won cases in the ECtHR in 2021 made new registration attempts, which were again unsuccessful. Jehovah’s Witnesses have been subjected to more serious attacks on their religious liberty than in previous years.

Muslims

In 2022, the Muslim denomination reported almost no violations against the religious rights of its employees and followers. One case of desecration of a house of prayer was indicated. On 8 April 2022, the mosque in Kazanlak was once again attacked by vandals. The facade of the historic building was stained with black spray with an insulting inscription. The management of Regional Mufti's Office – Stara Zagora reported this to the police and the Municipality of Kazanlak made sure the inscription was erased. Unfortunately, this is not the first such case in which Muslims from the city of Kazanlak face intolerance and disregard for their right to self-determination. The façade had been desecrated in 2021, and the perpetrator was not identified.105

Minority Orthodox Faiths

In 2021, in its judgments in the matters of the *Old Calendar Bulgarian Orthodox Church and Others v. Bulgaria*106 and *Independent Orthodox Church and Zahariev v. Bulgaria*107, the ECtHR found a violation of Article 9 in conjunction with Article 11 of the ECHR in relation to the refusal both churches to be registered as official denominations. In 2022, a year after the ECtHR’s decision, none of them had received such registration.

Independent Orthodox Church

On the basis of the ECtHR’s decision of 2021, the Independent Orthodox Church applied to the SCC for annulment of Sofia City Court’s initial decision to refuse registration of the religious denomination, a decision subsequently confirmed by the SCC.108 The applicant refers to Art. 303, para. 1, item 7 of the Code of Civil Procedure, which states:

*The party concerned may request the annulment of a judgment which has become final when:...*  

7. *The European Court of Human Rights has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in Rome on 4 November 1950 (ratified by law – SG No. 66/1992). (SG 80/92; amended by Protocol No. 11 of 1994) or the protocols thereto and a new hearing of the case is necessary in order to eliminate the consequences of the violation.*109

Since, by its judgment of 20 April 2021, the ECtHR held that the refusal granted in the original case infringed the applicants’ rights under Art. 9 in conjunction with Art. 11 of the ECHR, a new examination of the final decision is necessary in order to eliminate the consequences of the violation. The applicant requested that the final judgment be annulled and that the case be referred back to another panel of the Sofia City Court in accordance with the binding legal standard, set out in the ECtHR judgment of 20 April 2021.110

Similar to its decision of 2021 on the request of the Old Calendar Orthodox Church of Bulgaria to annul the decision refusing registration of this denomination as an official religion, the SCC here again held that the application was procedurally inadmissible insofar as it challenged a decision given in non-contentious proceedings (“which is unilateral and indisputable, and the decisions made therein do not resolve a substantive dispute and do not enjoy the force of res judicata”). The application was left without consideration.111 This

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106 ECtHR. *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria*, No. 56751/13, Judgment of 20 April 2021, available at: https://hudoc.echr.coe.int/eng?i=001-209327.
108 SCC. Order No3 of 08.06.2022 under item No1934/2021
110 SCC. Definition No. 3 of 08.06.2022 under item No. 1934/2021, T.K., II t.o.
111 Ibid.
decision was also confirmed by a three-member panel of the SCC, where, however, the court noted: “In the event of a confirmed refusal of the registry court, a new procedure for registration of identical circumstances could be initiated. It is in those proceedings that the ECHR's judgment finding infringements of the [ECHR] in the event of an effective refusal of registration should be complied with.”

Old Calendar Bulgarian Orthodox Church

After the Old Calendar Orthodox Church of Bulgaria in 2021 went through an identical process of refusal to revoke the decision on its initial attempt to register as an official religion, it submitted a new application for its registration as a newly established denomination in the register of the Sofia City Court, adding to its justification the ECHR decision. The application was again dismissed on the grounds that the ECHR's judgment "obliges the registry court not to register the subject, but to reassess whether the prerequisites of the law for doing so exist in the light of the interpretation of the Convention given by the ECHR".

The ECHR's criticism in 2021 was mainly directed against the practice of national courts to assess and interpret the beliefs of religious communities in relation to their similarities or differences with the beliefs of the Bulgarian Orthodox Church. Such an assessment could be made only by the representatives of a particular religion, insofar as otherwise a prerequisite arises for governmental designation of a unified institution, representative of a particular denomination. This in itself runs counter to the autonomy of religious communities, which should be guaranteed in the context of contemporary democratic societies.

It is for this reason that the refusal to register in the present case differs in its argumentation, focusing entirely on the name of the applicant for registration – "Old Calendar Bulgarian Orthodox Church":

"Orthodox" is an indication of a type of religion (religious beliefs), which is accepted canonically to be used by religious communities that are part of Orthodoxy and are recognized as such in canonical terms by the other Local Churches as part of the One, Holy, Catholic and Apostolic Church. "Bulgarian" is an indication of the areal location of the religious community, which refers to the area within the Republic of Bulgaria, and the standard orthodox understanding is that there can be one Orthodox Church in one area. "Church" itself refers to the institution that represents the denomination. The similarity in the names of these three elements, notwithstanding the phrase "Old Calendar", can be accepted as an identity in the religious denominations as religious beliefs, the areal scope and the status of the institution that implements it (autocephalous/ independent church)."114

112 SCC. Definition No. 50412 of 05.12.2022 under Personal Duty No. 1672/2022, T.K., I t.o.
113 Sofia City Court. Decision No. 65 of 01.11.2022 under item No 25/2022.
114 Ibid.
Jehovah's Witnesses

For the past 2022, Jehovah's Witnesses reported a significantly higher number of situations in which their right to assembly was violated, as well as specific cases of verbal and physical abuse against their followers.

Physical and verbal abuse

On July 6, 2022, in the city of Varna, a man began insulting and verbally harassing three women – followers of the religion "Jehovah's Witnesses" who shared their beliefs with passers-by. Mr. Andrei Lezin – also part of the Witnesses – intervened and tried to calm the man down and defuse the situation. Unfortunately, the abuser was joined by two more men who punched Mr. Lezin in the face and threw unidentified liquid at the women. One of the men tried to also hit one of the women, but without success, as she managed to protect herself. The case was reported, and a complaint was filed with the police. On October 3, Jehovah's Witnesses filed two complaints with the District Prosecutor's Office.115

On July 28, 2022, four representatives of the Vazrazhdane political party engaged in a verbal confrontation with several followers of "Jehovah's Witnesses" who were peacefully distributing information literature in front of a mobile book stand in Varna. During the incident, Mr. Georgi Georgiev, a member of the Municipal Council of Varna from the Vazrazhdane party, asked to check people's permission to use a mobile stand – an action for which he had no authority. All the while, Mr. Georgiev and his companions were filming everything without permission, making derogatory, mocking, and even offensive comments about the religious denomination of "Jehovah's Witnesses." The video is uploaded on the page of "Vazrazhdane – Varna" entitled "Vazrazhdane meet the sect "Witnesses of Yephova".116

Restrictive law enforcement

On 15 November 2022, while four representatives of the Jehovah's Witnesses were sharing their beliefs with passers-by, municipal police officers in the town of Pernik stopped them and asked them if they had a permit from municipality. The activity that the representatives of the religious denomination were carrying out is part of their religious rights and is protected both by the Constitution of the Republic of Bulgaria and the Religious

115 The information was provided to the BHC by Mr. Krasimir Velev, Law Department, "Jehovah's Witnesses in Bulgaria".
Denominations Act, and a number of international laws, including the ECHR. These Jehovah’s Witnesses representatives were fined on the grounds of art. 24 of Ordinance No. 1 on Public Order in Pernik Municipality\textsuperscript{117}, which reads: "It is forbidden to occupy, under any pretext, any municipal land, roads, paths, quarries or other land and water areas or parts thereof." Despite the formal written objection that Jehovah’s Witnesses filed with the Municipality, on 6 February 2023, one of them received an official penal decree and a fine, in which their objection to the Municipality was in no way addressed. The penal decree was appealed by Jehovah’s Witnesses at the Pernik District Court.\textsuperscript{118}

Following a decision of SAC (Supreme Administrative Court)\textsuperscript{119} on the legality of Ordinance No. 1 on public order within the municipality of Shumen\textsuperscript{120}, the validity of art. 5, para. 6, prohibiting door-to-door dissemination and sharing of beliefs by religious communities which, outside pandemic conditions, is the primary way of preaching for the Jehovah's Witnesses, remained in force. In November of the same year, SAC also dismissed the Jehovah's Witnesses' request to annul the decision of 14 May.\textsuperscript{121} Having exhausted all national instruments, in 2022 Jehovah's Witnesses are still awaiting movement on a complaint to the ECtHR, which they filed on 12 November 2021.

Positive developments after the case of Religious Denomination Jehovah's Witnesses in Bulgaria v. Bulgaria

With its decision on the matter of Religious Denomination Jehovah’s Witnesses in Bulgaria v. Bulgaria\textsuperscript{122} from November 2020, the ECtHR found that Bulgaria was in violation of Article 9 of the Convention, in view of its obstruction of the construction of a Jehovah’s Witnesses house of worship on its own property in Varna. In the past 2022, the Ministry of Justice translated and published the final decision on its website,\textsuperscript{123} and on 14 February 2022, it sent a letter to the Municipality of Varna, the Mayor of Varna and Jehovah’s Witnesses in Bulgaria, detailing the duties and options authorities in Varna and the Witnesses had, respectively. On 2 February 2022, the Republic of Bulgaria also presented its action plan to the Secretariat of the CMCE on the implementation of the ECtHR’s judgment.\textsuperscript{124}

\textsuperscript{117} Ordinance No. 1 on public order on the territory of the municipality of Pernik.
\textsuperscript{118} The information was provided to the BHC by Mr. Krasimir Velev, Law Department, "Jehovah's Witnesses in Bulgaria".
\textsuperscript{119} SAC. Decision No. 5823 of 14.05.2021 on adm. c.c. No. 7702/2020.
\textsuperscript{120} Ordinance No. 1 on the maintenance and protection of public order on the territory of Shumen Municipality (adopted with Decision No 578 of 11.03.2010).
\textsuperscript{121} SAC. Ruling No11023 of 02.11.2021 under No. 10390/2021, 5-member panel of the Supreme Administrative Court.
\textsuperscript{123} https://mjs.bg/home/index/48312690-3f31-497b-88ba-3ee5e458e500.
\textsuperscript{124} The information was provided to the BHC by Mr. Krasimir Velev, Law Department, "Jehovah's Witnesses in Bulgaria".
"Representatives of Jehovah's Witnesses are holding meetings with relevant institutions and looking forward to building a place of worship in Varna after 16 years of legal battles."  

Antisemitism

In 2022, Sofia Municipality did not give permission for the torchlight procession in memory of Gen. Hristo Lukov, the leader of the Union of Bulgarian National Legions. Statements against its staging were issued by the Ministry of Interior and the Prosecutor's Office. Although not on the scale in which it has been held in the past years and despite the ban by the mayor of Sofia Municipality, the procession was held in 2022. In 2020, the Sofia City Prosecutor's Office filed an application for termination of the registration of Bulgarian Edelweiss National Union, the association organizing the Lukov March. On 16 February 2021, the Sofia City Court dismissed the application as unfounded.

In 2022, the Sofia City Prosecutor's Office appealed the decision, but on 8 April 2022, the SCAC also found "the appeal [to be] unfounded, and the decision appealed by it – correct and issued in accordance with the law".

The Frognews Antisemitic cartoon – violation of the Code of Ethics of the Bulgarian Media

On 20 December 2022, the Committee on Journalistic Ethics (CJE) passed a decision on a complaint filed by the Organization of Jews in Bulgaria, Shalom, against an illustration published on the website of the media "Frognews". In its decision, the CJE took into account that:

- freedom of speech is not absolute, it has its limits outlined by the ECHR and the case-law of the European Court of Human Rights, including in the recently concluded matter of Behar and Gutmann v. Bulgaria on a complaint by Gabriela Behar and Catherine Guttmann to the ECtHR, where the Court found a violation of the right to respect of privacy and family life in relation to the prohibition of discrimination;

- the published cartoon is known from the historical archives of the Third Reich as one of the most direct depictions of antisemitic propaganda, in particular it served as the Nazi poster dated 1943, which is kept as part of the Oskar Schindler collection with a Polish inscription that reads: "Polish women under Jewish-Bolshevik slavery". The image crosses the permissible boundaries set by the protection of the rights of others.

125 A quote from a report on the activities and rights of "Jehovah's Witnesses" provided to the BHC by the Legal Department of Jehovah's Witnesses in Bulgaria.
126 SCAC. Decision No. 231 of 08.04.2022 under case file No. 468/2021
As CJE also reminded, "the uncritical use of visual material without knowledge and reference to the context risks violating ethical rules established in the Code of Ethics of the Bulgarian media."\textsuperscript{128} The link containing the cartoon does no longer exist.

**Crimes against religious denominations**

BHC requested information under the Access to Public Information Act (APIA) from the Prosecutor’s Office on crimes against religious denominations (Articles 164 – 166 of the PC) for the first half of 2022. With regard to art. 164, the prosecution had only dealt with activities under para. 2 (desecration, destruction of or damage to a religious temple, house of worship, adjacent sanctuary or building, their symbols or tombstones). On the grounds of this text, it has observed one file, opened one file, resolved one file, observed five pre-trial proceedings, initiated two and decided on two pre-trial proceedings. No one has been brought to justice or convicted of any crimes. Under art. 165 of the PC, which affects the forcible obstruction of free religious expression and under art. 166, which refers to persons using the church or religion for propaganda against state power, there was zero activity.\textsuperscript{129}

**ECHR judgment in a case against Bulgaria on freedom of conscience and religion**

In 2022, the ECtHR ruled in the matter of *Tonchev and others against Bulgaria*\textsuperscript{130}, related to a violation of the right to freedom of religion. The applicants were pastors and evangelical religious associations in Burgas. They complained about the dissemination of information about their religion by the local municipality in schools in the city. They believed that the information was hostile and defamatory, and claimed that this constituted a violation of their right to freedom of religion under art. 9 and 14 of the ECHR. On 9 April 2008, Burgas City Hall sent a circular to the principals of schools in the city. The letter was signed by the Deputy Mayor, the Head of the Local Commission for Combating Anti-Social Behaviour of Minors, and a police officer. The letter informed the schools of the recent increase in the activity of non-traditional Christian sects during Easter season and asked them to provide information on how to distinguish between sects and traditional Orthodox religion. Before the national courts, the applicants claimed, inter alia, that the circular contained defamatory allegations concerning their beliefs, so its dissemination to schools was a violation of their freedom of religion and the principles of separating church from state, the State's obligation of neutrality and the principle of equal treatment of religions. The Court noted that its recent practice had

\footnotesize{\textsuperscript{128} The Committee on Journalistic Ethics defined as inadmissible the anti-Semitic cartoon of Frognews, Marginalia, 30.12.2022, available at: https://www.marginalia.bg/novini/komisiyata-po-zhurnalisticheska-etika-opredeli-kato-nedopustima-antisemitskata-karikatura-na-frognyuz/.

\textsuperscript{129} Prosecutor General's Office of the Republic of Bulgaria. Information received by the BHC under the Access to Public Information Act (APIA), with ent. No40/2023 from 16.01.2021

\textsuperscript{130} ECHR. *Tonchev and Others v. Bulgaria*, No. 56862/15, Judgment of 13 December 2022, available at: https://hudoc.echr.coe.int/fr?i=001-221473.}
developed on the question of whether the use of defamatory terms in relation to a particular religious community can be regarded as a violation of the rights guaranteed by Art. 9 of the Convention. In two recent cases, the ECtHR considered that the hostile or degrading mentioning of a religious community in documents issued by state authorities, if it is likely to adversely affect the exercising of freedom of religion by its members, constitutes a violation of the rights guaranteed by Article 9 of the Convention. The Court found that Art. 9 of the Convention did not prohibit public authorities from making critical assessments regarding representatives or members of religious communities, but such statements must be supported by evidence of specific actions that pose a risk to public order or the interests of others, should avoid questioning the legitimacy of beliefs and be proportionate to the circumstances. In this case, the court found that the authors of the circular distributed in schools had made negative and unbalanced qualifications of the evangelical churches as "dangerous sects" that violated Bulgarian law and caused division without regard to their own duty of impartiality. The court also found that the use of these qualifications was unnecessary, as well as that the offensive or defamatory statements had not been formally withdrawn. Despite efforts to downplay the incident and respecting religious freedom of movement, the authors' use of these terms had not been officially sanctioned. Therefore, the ECtHR found a violation of art. 9 of the Convention.

Chapter 8. Freedom of expression

In 2022, freedom of expression in Bulgaria was subjected to new abuses on the backdrop of Russia's full-scale war against Ukraine. Under the false guise of freedom of speech, the aggressor's propaganda theses were being spread by persons in the highest positions of government, representatives of public institutions and the public media. In this context, a number of representatives of the liberal democratic narrative were systematically silenced on social network platforms, which caused the largest public response against the administration of Facebook's Bulgarian content since the network existed. The decade of economic and political dependencies in the media and the substitution of expression freedom values have made Bulgarians the nation easiest to manipulate within the European Union (EU).

International context

Irene Kahn, the Special Rapporteur for the Protection of Freedom of Opinion and Expression, defines disinformation as: "false information that is deliberately disseminated to cause social harm". The year 2022 saw the intensifying of worrying trends in the impact of

disinformation on human rights and fundamental freedoms on an international scale, that had been established during the pandemic times. The COVID-19 infodemics\(^\text{132}\) engaged much more actively than before the attention of international human rights bodies on the new role of disinformation in the context of modern technologies.

As early as mid-March, the CMCE adopted a Recommendation to Member States on promoting a favourable environment for quality journalism in the digital age\(^\text{133}\). In June, the European Commission updated the Code of Practice on Disinformation\(^\text{134}\), which engages major online communication platforms and other technology companies.

At the 49th session of the UN Human Rights Council, at the request of Ukraine, Japan, Latvia, Lithuania, Poland, the United Kingdom and the United States, a resolution on the role of states in countering disinformation was adopted\(^\text{135}\). In August, a report was also presented\(^\text{136}\) by the UN Secretary-General (in line with the General Assembly resolution adopted in 2021) on countering disinformation to promote and protect human rights and fundamental freedoms.

In a joint statement\(^\text{137}\) in May, observers on freedom of expression and freedom of the media at the United Nations, the OSCE, the African Commission on Human Rights and the Inter-American Commission on Human Rights stressed the critical importance of journalistic work and the increased risks of propaganda and disinformation in light of Russia's war against Ukraine.

All these actions and documents of international institutions aimed at encouraging and supporting countries to fight disinformation, whose key destructive impact on democratic societies has already been clearly recognized and proven unambiguously.

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\(^{132}\) WHO. Infodemic – [https://www.who.int/health-topics/infodemic](https://www.who.int/health-topics/infodemic).

\(^{133}\) Council of Europe. Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age, available at: [https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5dd0](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a5dd0).


Instead of getting worse, it is becoming hopeless.\textsuperscript{138}

Against this background, Bulgaria continued to show its inability to guarantee its citizens access to verified, timely, evidence-based information. In the context of Putin’s war against Ukraine, the media illiteracy being bred over the recent years has led to an explosion of propaganda speech. These problems were also highlighted in the international reports published during the year, monitoring the freedom of expression and media freedom.

In 2022, Bulgaria climbed the media freedom index of the international organization Reporters Without Borders, from 112th place in 2021 to 91st in the 2022 report.\textsuperscript{139} There is no reason for joy, however, as in the report it was explicitly noted that the rise was due only to the change of government [at the end of 2021] and the hope that this will bring improvement in the media environment, despite the continuing oligarchic control over the media. Globally, the document warned of the "catastrophic effects of news and the information chaos resulting from the globalized and unregulated online information space, which encourages fake news and propaganda."\textsuperscript{140} According to the analysis, the information environment as a whole is in a state of unprecedented polarization, which "feeds divisions within states, as well as polarization between states at the international level." Two other media freedom monitoring tools published similar conclusions for Bulgaria. Freedom House Report on Democracy in the World, released in April 2022\textsuperscript{141}, noted that while the media sector remains pluralistic, many media outlets depend financially on state support through advertising, leading to pressure to publish government-friendly material. Media ownership also remains opaque. The same criticism in May 2022 was voiced in the Council of Europe’s annual report on freedom of expression in 2021.\textsuperscript{142} In it, Bulgaria is mentioned as a country where the advertising budgets of state institutions are used as an indirect means of controlling the media. Another cause for worry is the lack of transparency in the media ownership.

Highlighting the same problems, the Reuters Institute added in its annual report\textsuperscript{143} that as a result only 15% of Bulgarians believe that the media are free from political and economic dependencies.

In July, the European Commission published its third annual Rule of Law Report.\textsuperscript{144} The recommendations to Bulgaria in the part on media pluralism emphasized the need for

\textsuperscript{138} The expression was used by MP Vezhdi Rashidov on the occasion of the unprecedented failure to elect the chairman of the 48th National Assembly: \url{https://www.dnevnik.bg/4405983/}.


\textsuperscript{140} Ibid.


\textsuperscript{142} Council of Europe. Freedom of expression in 2021, available at: \url{https://rm.coe.int/freedom-of-expression-2021-en/1680a6525e}.


transparency and control over the distribution of advertising funds, spent by government institutions.

Information Warfare

As early as the pandemic year 2020\textsuperscript{145}, it became clear that the Bulgarian media environment is completely helpless in countering the disinformation being spread at all levels of the public dialogue, including by representatives of state institutions at the highest level, while the social networks, on the one hand create and on the other amplify any disinformation messages. Russia’s invasion of Ukraine was associated with an intensification of the propaganda narrative, multiplication of the number of publications with propaganda content and exacerbation of the language, as well as with clear signs of takeover of the very bodies charged with protecting the freedom of expression and the right of citizens to receiving reliable and accessible information. Within 2022, the four parts of a large-scale study, entitled: “Russian Propaganda in Bulgarian Media Online”\textsuperscript{146}, developed by the Human and Social Research Foundation, were published. The analysis is a continuation of a study of anti-democratic propaganda in Bulgaria from 2013 to 2017.\textsuperscript{147}, which found that Euro-sceptic propaganda began in 2013 and was directly related to the "Russian political calendar". The study of online propaganda in the first half of 2022 clearly shows the link between official pro-Kremlin propaganda speech and the spread of its narrative in Bulgaria. According to the report, among the most active disseminators of pro-Kremlin propaganda online in Bulgaria are the sites Novini247, News Front, Pogled.info, Blitz, and Informiran.net. The most influential distributors of propaganda speech in the social networks are the journalist Martin Karbovski and the leader of the pro-Kremlin party "Vazrazhdane" Kostadin Kostadinov. As a special case study, the analysis highlights the President Rumen Radev, who since mid-March has been systematically disseminating theses typical of the Russian propaganda narrative. The report emphasizes that "due to his institutional position and rating, [Radev] has reached peaks of several hundred publications, covering his every speech." The last part of the document examines the role of the social network Facebook as a platform that spreads propaganda messages targeting specific users, showing indications that they are more susceptible to believing them.


\textsuperscript{146} Foundation for Humanities and Social Research. Russian propaganda in the Bulgarian media online, available at: https://hssfoundation.org/category/ Russian-propaganda-online-media/.

\textsuperscript{147} Foundation for Humanities and Social Research. Illiberal discourses and propaganda messages in the Bulgarian media: dissemination and social perception, available at: https://hssfoundation.org/ anti-liberal-discourses-and-propaganda).
According to a study of the Center for the Study of Democracy, Russia-related businesses through their economic representatives in Bulgaria have been exerting media influence and even participating in the media market as owners.

The goal of the intense hybrid warfare is not only to justify Putin's aggression in Ukraine, but also to "draw dividing lines in society and undermine trust in democracy, the European Union and NATO," according to an analysis published by the Association of European Journalists in Bulgaria.

Media Ethics in Wartimes

In early May, the CJE simultaneously published three opinion statements "on topical issues related to the coverage of the war that the Russian Federation is waging against the people of Ukraine." Along with recommendations for the protection of the rights of child victims of war when featured in media materials, and for precise moderation of media forums, the Commission also voiced its interpretation on the protection of freedom of speech when such speech is propagandic. According to the opinion statement, "the audience should be informed about the points of view and theses of both Ukraine and the aggressor, the Kremlin, but the presentation of propagandic theses must always be done in context. In the absence of context, the media becomes a mere repeater and amplifier of disinformation and war propaganda, coming from the official Russian institutions.

The lack of sufficient adherence of the media to this recommendation finds its most striking example on public radio. Despite its generally professional approach to the creation of news and journalistic content, the national program "Horizont" of the Bulgarian National Radio (BNR) maintains the main source of pro-Kremlin propaganda in electronic media. This is the show "Politically INcorrect", broadcast every Saturday and hosted by Petar Volgin. The author has established himself as one of the most aggressive conduits of the Kremlin's propaganda narrative and anti-Western rhetoric, which has sparked a series of reports and a public debate about propaganda in public media. In addition to his own show, Petar Volgin is also a rotating host of the weekday information block "12 + 3".

The program "Politically INcorrect", broadcast on 10 April 2022, provoked the Council for Electronic Media to send a query to the CJE about the host. The Commission found a violation of the requirement to provide reliable and verified information embedded in the Code of

150 CJE. Three opinions of the Committee on Journalistic Ethics on topical issues related to the coverage of the war the Russian Federation is waging against the people of Ukraine, available at: https://mediaethics-bg.org/three-opinions-of-committee-by-journals/.
151 Ibid.
Ethics of the Bulgarian media. In its rationale, the CJE recalls that Article 10 of the ECHR does not guarantee completely unlimited freedom of expression.\(^{152}\) However, this did not lead to a sanction of BNR by CEM, nor did it change the editorial policy regarding the broadcasts conducted by Petar Volgin. The host received an administrative penalty.\(^{153}\)

Later this year, CEM decided to fight disinformation in the media by organizing public discussions on the issue.\(^{154}\)

### The Council for Electronic Media

Over the year, the regulator itself was unstable and demonstrated inability to fulfil the duties vested in it by the law. In April, the terms of office of three of its members expired. From his own quota, President Rumen Radev appointed the TV journalist Gabriela Naplatanova. The parliamentary quota was filled by Prolet Velkova, a radio journalist and by Simona Veleva, who is a specialist in constitutional law. The election was not without scandals after the populist ITN party of TV presenter Stanislav Trifonov nominated Martin Karbovski, the same journalist identified by analyses as a particularly influential disinformation propagator.

Shortly after the inauguration of the new members of the Council, a procedure for the election of a new Director General of the Bulgarian National Television (BNT) \(^{155}\) was launched – this being one of the important functions of CEM, of particular importance in a period of political turmoil and a continuous election cycle. Despite the serious public opposition even against allowing the current Director General of BNT Emil Koshlukov to enter the competition\(^{156}\), the procedure ended without the election of a new director, with the decisive vote of Gabriela Naplatanova. Thus, Koshlukov remained at the head of the public television with an expired mandate and in the face of public distrust throughout the period of the then pending consecutive election campaign. As CEM did not start a new election procedure until


\(^{155}\)CEM. CEM launched a procedure for the election of the Director General of BNT, available at: https://www.cem.bg/displaynewsbg/811.

\(^{156}\)Public figures want CEM not to allow Koshlukov to enter the hearing for head of BNT, Mediapool, 22.06.2022, available on https://www.mediapool.bg/obshestvenitsi-iskat-sem-da-ne-dopusne-koshlukov-do-izslugvaneto-za-shef-na-bnt-news336953.html.
the end of the year, this situation continued into the new 2023, when the fifth consecutive parliamentary elections in two years were announced.

Sonya Momchilova, elected after her appointment to the Council as its President, has also become a case study that calls into question the ability of CEM to meet its legal requirement to "be guided by the interests of society, to protect the freedom of speech, the independence of media service providers, media pluralism, cultural and linguistic diversity, consumer protection, accessibility, and non-discrimination." Momchilova systematically expressed positions incompatible with democratic values that clashed with ethical and professional standards for work in the media. This situation escalated at the end of the year, when CEM’s chairwoman publicly attacked journalist Maria Cheresheva for her work on an international investigation into the unlawful violent repulsion of asylum seekers from EU borders. Because of this case, BHC and the Association of European Journalists – Bulgaria (AEJ-Bulgaria) demanded Momchilova's resignation, while the Union of Bulgarian Journalists came up with a position statement in her defence:

After the comment referred to by BHC is nowhere to be seen anymore, the hype around it remains incomprehensible to the society by and large, along with the reasoning for Momchilova's demanded resignation.

Targeted Speech

In line with this, publicly demonstrated political pressure, exerted on journalists increased, including threats, expulsion from public events, calling in reporters and editors to visit the Prosecutor's Office and the Ministry of Interior. The strongest presence in terms of political attacks against journalists throughout 2022 and early 2023 was that of the pro-Kremlin party "Vazrazhdane". In the early part of the year, bTV journalist Maria Tsantsarova revealed that while leading an anti-vaccination campaign, many of the party's MPs had actually been vaccinated against COVID-19. Subsequently, she was subjected to inspections by government institutions. Tsantsarova was twice pressured by the authorities to disclose her sources -- first in July, after being reported by Vazrazhdane to the Commission for Personal Data Protection, and then again in September -- by the prosecutor's office. Within the year, journalists in

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158 Ognyanova, N. Sonya Momchilova, two points, 04.05.2022, available on https://nellyo.wordpress.com/2022/05/04/cem-35/.
162 The unacceptable pressure of the authorities to reveal the sources of journalistic investigation continues, AEJ – Bulgaria, 16.09.2022, available at: https://aej-bulgaria.org/16092022/.
general and representatives of specific media in particular, were subjected to insults and threats from the leader of the party, Kostadin Kostadinov, and his colleagues. The situation escalated when on November 5 Kostadinov tried to expel a reporter of the online edition Dnevnik.bg, from a party press conference in the press club of the Bulgarian News Agency, calling the media "foreign agents."\(^{163}\)

In October, a team of the Capital newspaper was summoned to the prosecutor's office\(^ {164}\) because of an article revealing suspicions of abuse in the purchase of medicines. There is no evidence that the abuses alleged in the article have been investigated.

In May, during his participation in the competition for director of BNT, Venelin Petkov – former director of News, Current Affairs and Sports at bTV – revealed in an interview with the Bulgarian National Radio that private television had been subjected to pressure by GERB during the party's government\(^ {165}\).

In October, the Vazrazhdane party consolidated its attack on the media and the civil sector by submitting a bill on the registration of foreign agents\(^ {166}\) analogous to the similar law adopted in the Russian Federation.

At the end of the year, on Christmas Day, the Ministry of Interior of Russia announced a federal search for the Bulgarian Hristo Grozev, known for his investigations on behalf of the journalistic group Bellingcat, among which: the downing of the MH-17 passenger plane over Donbas and the poisoning of the Kremlin opposition leader Alexei Navalny. The Bulgarian state summoned Russian Ambassador Eleonora Mitrofanova to demand an explanation and protest this action only after the New Year’s holidays.

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**SLAPP**

After more than 60 organisations from Europe, including BHC,\(^ {167}\) asked the EU in 2020 to address the increased Strategic Lawsuits Against Public Participation (SLAPP), the directive

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\(^{163}\) [Kostadinov called media "foreign agents" and avoided Dnevnik's questions](https://www.dnevnik.bg/4399326/), Dnevnik, 05.10.2022.

\(^{164}\) [Prosecutors question journalists from Capital over publication about alleged corruption](https://www.dnevnik.bg/4429351/), Dnevnik, 16.12.2022.

\(^{165}\) [Venelin Petkov before the Bulgarian National Radio: There were pressure attempts against us](https://bnr.bg/sofia/post/101734334/venelin-petkov), BNR, 10.11.2022.

\(^{166}\) [Foreign Agents Registration Bill](https://www.parliament.bg/bg/bills/ID/164424).

was presented in spring 2022. A month earlier, the first ECtHR decision was issued, in which the court referred to the concept of SLAPP.

No data is yet being collected in Bulgaria on SLAPP cases that are filed against critical journalists or public figures.

**Meta freedom**

The year was marked by efforts without precedent in this country, to improve the quality of content moderation in the most popular social network in Bulgaria, Facebook. During the tenure of the regular government, the newly established Ministry of e-Government launched a dialogue with technology platforms aimed at clarifying the principles of content moderation, better control on disinformation and propaganda, and better protection of users' freedom of expression.

After the overthrow of the regular government, in the then next parliament, the former Minister of e-Government and current Chairman of the relevant parliamentary committee Bozhidar Bozhanov initiated a bill on transparency in social networks. However, this initiative could not lead to concrete results because of the short life of the 48th National Assembly.

In October, the investigative media Bivol.bg published numerous personal profiles of employees in the Bulgarian branch of the company TELUS International, which moderates Bulgarian content on Facebook. The publication provoked a discussion about its ethics as well as a reaction from the attacked company, but some democratically oriented network users announced that this had led to a sharp decrease in the cases of their arbitrary silencing on the platform.

All these processes produced some legitimate results. According to the annual media literacy report, our country remains in the group with "problematic" media literacy, in 33rd place, out of 41 countries in Europe and last among EU member states in terms of population’s susceptibility to disinformation.

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171 Publication of Bird.bg available at: [https://www.facebook.com/birdreporting/posts/pfbid0JE3aSnciRWR9jQDLvP6obqH4Kp9Rp72UjkK7GsTNA6ta4VmKdrP97p1x2FXQz9pAl](https://www.facebook.com/birdreporting/posts/pfbid0JE3aSnciRWR9jQDLvP6obqH4Kp9Rp72UjkK7GsTNA6ta4VmKdrP97p1x2FXQz9pAl).


Chapter 9. Freedom of association and peaceful assembly

In 2022, measures against COVID-19 were gradually abolished. As in previous years, the authorities, in the face of the Registry Agency (RA) and the courts, repeatedly obstructed the registration of associations of Macedonians on arbitrary and discriminatory grounds, in flagrant violation of international standards on freedom of association. Twice, once in March and again in December, CMCE examined the implementation of judgments on a group of cases: OMO Ilinden and others v. Bulgaria. The Committee expressed concern about the fact that Macedonian organizations in Bulgaria are routinely denied registration because of the objectives, which they declare to have set for themselves.

At the end of February, the MH (Ministry of Health) began a phased removal of measures against COVID-19. The process continued until mid-November when the latest measures were dropped. Although some measures had been applied during this period, this did not obstruct the freedom of peaceful assembly, which remained unaffected by them in any way. Unlike 2021, in 2022 there was no restriction of this right due to anti-epidemic measures. During the year, a number of political parties, NGOs, trade unions and informal groups organized unhindered public protests on various topics. Particularly large-scale were the protests in Sofia in solidarity with Ukraine and with Ukrainian refugees after the Russian aggression of 24 February 2022.

The most serious problem with the right to freedom of association during the year were the refusals by RA (Registry Agency) and the courts to incorporate associations of Macedonians as legal entities, all on quite arbitrary and discriminatory grounds, and in flagrant violation of international standards. The refusals were issued in gross and deliberate disregard of the ECHR’s decisions in lawsuits of Macedonian associations, very often with reasons that have been repeatedly considered and declared untenable by this court. This happened after repeatedly declared refusals by Bulgarian politicians to recognize the existence of persons with a Macedonian consciousness in Bulgaria, as well as against the backdrop of the deteriorating relations between Bulgaria and North Macedonia.

In the early days of 2022, the then Prime Minister,175 the President,176 and subsequently the Vice President of Bulgaria177 set the tone for denying the existence of a Macedonian minority in Bulgaria. Many other politicians, organizations and public intellectuals routinely

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175 Kiril Petkov: A question about a Macedonian minority in Bulgaria is inadmissible, 24 hours, 28.01.2022
176 President Radev: I hope that the RNM leadership will show wisdom and political courage to resolve the main issues, 20.01.2022, available at: https://www.president.bg/news6386/prezidentat-radev-nadyavam-se-darzhavnoto-rakovodstvo-na-rsm-da-royavi-madrost-i-politicheska-smelost-za-reshavane-na-osnovnite-vapropsi.html.
177 Vice President Yotova received diplomas from Macedonian media, Trud, 17.04.2022, available at: https://trud.bg/ Vice President-yotova-ograms-Macedonian-media-photos/.
repeated this denial in 2022. Some of them denounced the Macedonians as "paid tools of the Macedonian nationalists from Skopje" 178. In June 2022, the nationalist VMRO party called on the parties in the Bulgarian parliament to consider qualifying any actions related to attempts to support and promote claims for recognition of the "so-called Macedonian minority in Bulgaria", including in international organizations such as the Council of Europe, as violations of Art. 11 of the 2017 Treaty of Friendship between Bulgaria and North Macedonia. On October 7, 2022, the Blagoevgrad Municipal Council unanimously adopted a declaration on the occasion of the opening of the Macedonian Cultural Club in Blagoevgrad by several Macedonian organizations. In it, this action was condemned as "a gross provocation and demonstration by organizations illegitimate to our law." It also states that "all actions to create an organization in which a group of people identify themselves as a "minority" within our nation-state, are a gross violation of the Constitution and the laws in the Republic of Bulgaria. 180

The bilateral tension between Bulgaria and North Macedonia during the year reached a climax in the period June – October with the opening of two Bulgarian cultural centres – "Ivan Mihaylov" in Bitola and "Tsar Boris III" in Ohrid. Both initiatives were met with hostility and were considered provocative by some circles in North Macedonia due to the active role of Ivan Mihaylov and Tsar Boris III in the denial of Macedonian identity, in organizing the killing of Macedonians and in the occupation of Macedonia, during World War II. Arson and several public protests in the two North Macedonian cities provoked hostile attitudes against Macedonians in Bulgaria.

During the year, three Macedonian organizations – the United Macedonian Organization (OMO) "Ilinden", the Society of Repressed Macedonians in Bulgaria, Victims of Communist Terror (DRM) and the United Macedonian Organization "Ilinden" – Blagoevgrad, made several unsuccessful attempts at registration. RA and the courts ruled to deny them, citing motives that the ECtHR has repeatedly considered and rejected in its previous rulings on cases related to the right of association of Macedonians in Bulgaria. These grounds are primarily related to the main goal of the organizations – the protection of the rights of the Macedonian minority. RA and the courts also revived some old, and rejected by the ECtHR, grounds for refusal, such as: alleged political objectives that the organizations pursue, non-compliance of the objectives with the declared nature of the organization, as well as completely fabricated reasons, unrelated to the articles of association. As a result, at least five new complaints by Macedonian organisations were filed with the ECtHR in 2022, significantly increasing the number of pending cases there.

178 Prof. Trendafil Mitev: The presence of a Macedonian minority in Bulgaria is absurd and an anti-Bulgarian propaganda, Epicenter, 07.01.2022, available at: https://epicenter.bg/article/Prof--Trendafil-Mitev--Nalichieto-na-makedonsko-maltsinstvo-u-nas-e-absurd-i-antibalgarska-propaganda/270345/11/0.
On 4 February 2022, SCA (Sofia Court of Appeal) confirmed the refusal to register DRM, issued in 2021 by RA and confirmed by the Blagoevgrad District Court (BDC). SCA held that the applicants had complied with the formal requirements for the submission of evidence of the occurrence of the circumstances with regards to which the application to RA is made. But the objectives of the association, whose registration is sought, contradict art. 44, para. 2 of the Constitution of the Republic of Bulgaria because they are directed against the unity of the Bulgarian nation. The Court cites the relevant provisions of the Statute, which refer to activities protecting the rights and interests of Macedonians in Bulgaria, repressed during the communist regime. According to the court, the objectives thus formulated and the means for their implementation define the association as protecting the violated rights and interests of an ethnic minority on the territory of Bulgaria, "which objectively does not exist as a separate and established group of people, possessing a religious, linguistic, cultural or other characteristic distinguishing them from the rest of the population of the country." Therefore, the promotion of such a minority through a non-profit association "is not essentially aimed at protecting their rights, considering they are not different from those of other citizens, but at cultivating among a certain part of Bulgarian citizens a different ethnic self-consciousness, which has not been formed in a natural historical way." The formation of such an association is therefore directed against the unity of the nation. In addition, according to the court, this Association’s Statute contains political objectives related to the implementation of activities inherent in a political party, which the provision of Art. 12, para. 2 of the Constitution does not allow. SCA also held that the restriction of the right of association in the present case pursued a legitimate aim – “protection of the rights and freedoms of other citizens not participating in the association”.181

A month after SCA’s final refusal, DRM submitted a new application for entry in RA. On 08.03.2022, the association was refused because its Statute included goals and means for their achievement, related to the protection of the rights and interests of Macedonians in Bulgaria. According to the RA official, "the main objectives of the association infer of association on an ethnic principle, contrary to the ban stipulated in art. 44, para. 2 of the Constitution of the Republic of Bulgaria. In addition, according to the official, art. 10 of the Statute "refers to events inherent in the activities of political parties" (organization of legitimate rallies and demonstrations), which is not permissible for a non-profit association 182.

In April, the BDC confirmed RA’s decision. The BDC fully accepted RA official’s arguments regarding the incompatibility of the objectives of the association with Art. 44, para. 2 and Art. 12, para. 2 of the Constitution. According to the court, the work of the association on the problems of the Macedonian ethnic minority "is in obvious contradiction with the current objective law and order in the state" and also the association aimed to protect the rights of an ethnic minority "that objectively does not exist as a distinct or other established group of people possessing a religious, linguistic, cultural or other characteristic distinguishing them

181 SAC. Decision No78/04.02.2022 under case file No1110/2021
182 RA. Refusal No20220307110109/08.03.2022
from the rest of the population in the country." Therefore, the proclamation of such a minority through the association "goes against the unity of the nation", in violation of art. 44, para. 2 of the Constitution. 183

The decisions of RA and BDC was also confirmed by SCA in June. With regard to the objectives of the association, SCA assumed that by adopting laws which declared the communist regime criminal and provided for political and civil rehabilitation of repressed persons, the state had created the necessary legal framework for the rehabilitation of all persons, regardless of their ethnicity. Therefore, in this case, the stated objectives of the association and the means to achieve them do not concern the protection of the rights and legitimate interests of repressed persons but are aimed at "formalizing and promoting the ethnicity that the applicants claim exists within the sovereign state." This, however, contradicts the principle of the unity of the nation and is a prerequisite for provocation of national and ethnic enmity. Therefore, the refusal to enter in the register is a proportional interference with the right of association under art. 11 of the ECHR. 184

By the end of 2022, the DRM received another refusal for registration from RA. It was motivated, inter alia, by the inadmissibility of "formalization and promotion of ethnicity that applicants claim exists within the sovereign state". 185

In 2022, OMO "Ilinden" also received two refusals of entry. In May, after a significant delay, SCA ruled on the association's appeal against BDC’s decision, by which this court, just like RA earlier, assumed that the association was a threat to the unity of the nation, and the national and public security of Bulgaria. In affirming that decision, SCA adopted a kind of "innovative" approach in this case. The Court emphasized that it was not bound by the motives of the lower courts in ruling to refuse entry, but that it had again carried out an inspection in accordance with the law. As a result, SCA did not discuss the grounds for refusal by RA or BDC at all, nor did it pay attention to the arguments in the appeal. It formulated new reasons for refusal which differed from those of RA and BDC and are of an exclusively technical nature. According to SCA, the protocol submitted with the application for registration indicated the place and time of establishment of the organization (06.11.2021, Sandanski), but did not specify the exact time and exact place where this happened. It was therefore impossible for the court to assess whether there was a simultaneously expressed will on the part of the required number of founders. Secondly, according to SCA, it was not clear from the provision of art. 7, para. 3 of the Statute of the organization who was applying for membership – the applicant for membership or the local organization (on this "ambiguity", however, the organization had not received any instructions from RA after the initial submission of the application). Thirdly, according to the court in art. 8, para. 6 of the Statute, the wording regarding settlement of property relations between an expelled member and the association is a blanket and unclear one (in fact it is quite standard for a large number of statutes of non-profit organizations).

183 BDC. Decision No36/12.04.2022 under case file No64/2022
184 SAC. Decision No423/22.06.2022 under item No450/2022
185 RA. Refusal No20220919101236/20.09.2022
These defects, according to SCA, were sufficient to confirm the decision to refuse registration. There was no need to assess the legality of the objectives of the association.

In June, after a leadership change, OMO "Ilinden" Association decided to submit a new application for registration. On 1 July 2022, a registrar from RA refused entry. In the reasoning for refusal, the official cited Art. 5 and Art. 6 of the Statute of the organization, which list the objectives and means for their achievement. According to the official, "the objectives thus formulated define the association as a uniting ethnic minority on the territory of the Republic of Bulgaria, possessing a religious, linguistic, cultural or other characteristic distinguishing them from the rest of the country's population. In these circumstances, the establishment of an association with the objectives set out in its founding act essentially pursues the artificial creation, imposition, and promotion of the idea of the presence among a certain part of the Bulgarian population of an ethnic consciousness different from the national one. The promotion of such a minority through an organization – a non-profit association, designed to meet their specific needs, is essentially aimed at cultivating among a certain part of the Bulgarian citizens a different ethnic self-consciousness, creating prerequisites for ethnic confrontation, threatening the territorial integrity of the country, which is contrary to the ban imposed by Art. 44, para. 2 and with the principle stipulated in art. 2, para. 2 of the Constitution of the Republic of Bulgaria."  

Following an appeal in July, the BDC upheld RA’s refusal. According to the court, "the goals so defined and the means for their achievement create the suggestion of the presence of a disenfranchised minority of Macedonian ethnicity on the territory of the Republic of Bulgaria, opposed to the rest of the Bulgarian citizens and repressed by the state, which is clearly not true and does not correspond to reality. The establishment of an association with such goals and means is undoubtedly aimed at dividing the nation and creates prerequisites for ethnic confrontation, which is why it contradicts Art. 44, para. 2 of the Constitution of the Republic of Bulgaria.” According to the court, this is a prerequisite for application of the exceptions under para. 2 of art. 11 of the ECHR, as well as the relevant provision of the International Covenant on Civil and Political Rights.  

In October, SCA upheld the decision of the BDC, as well as the refusal to register the organization. According to the court, art. 5 of the Statute of the association states that "the association aims "to protect the Macedonian national intangible cultural heritage that is subjected to ethnocide by the Bulgarian cultural institutions", as well as to have the right of response in case of propaganda manipulation of Macedonian history and culture. In the means to achieve the goals it is specified that symposia will be held to discuss the reasons for the policy of forced assimilation, discrimination and xenophobia against Macedonians in the Republic of Bulgaria, as well as that they will put demands for the national rights of Macedonians before Bulgarian government institutions and the relevant international organizations, peaceful processions will be held to celebrate historical dates of Macedonian

186 RA. Refusal 20220630121016/01.07.2022
187 BDC. Decision No82/15.07.2022 under case file No153/2022
national history [...] The goals so defined and means of achieving them suggest the presence of a minority of Macedonian ethnicity, deprived of rights or rights that have been violated, on the territory of the Republic of Bulgaria, opposed to the rest of the Bulgarian citizens and repressed by the state, therefore the establishment of an association with such goals is aimed at dividing the nation and creating prerequisites for ethnic confrontation, therefore, it contradicts art. 44, para. 2 of the Constitution of the Republic of Bulgaria. In view of the above, there are prerequisites for invoking the exceptions provided for in para. 2 of art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in art. 22 para. 2 of the International Covenant on Civil and Political Rights (ratified by and in force for Bulgaria since 1976), which allow the registration authority to refuse to enter the association in the register, and respectively for the court to uphold this refusal as lawful”.

In May, the Blagoevgrad branch of OMO "Ilinden" decided to get a registration as a separate legal entity under the name "United Macedonian Organization Ilinden - Blagoevgrad". The Statute of this organization also refers to the rights of the Macedonian minority in Bulgaria and to combating discrimination against Macedonians. The association submitted an application for registration with RA in early June and on 7 June was refused. In the reasoning for refusal the registry official put forward three reasons: the stated objectives of the association define and impose obligations on the state, which is inadmissible; the objectives of the association do not correspond to the activity of the association for private benefit, they should be carried out in public benefit; the provisions of the Statute constitute a promotion of a Macedonian minority through a non-profit organization that is directed against the unity of the nation.

The refusal was confirmed soon after it was decreed by BDC. According to the court, "the Statute of the association sets out seven objectives related to the protection of the rights of a Macedonian minority." This, according to the court, raises the question of the recognition of such a minority and whether these objectives do not threaten the national security of Bulgaria. In addition, the court held that some of the purposes in the statute were vaguely articulated, and others imposed an obligation on the State.

Following an appeal in October, SCA upheld the decision of the BDC, but with motives and an approach similar to those in one of the previous cases of OMO "Ilinden". The Court emphasised that it was not bound by the reasons given by RA official in ordering the refusal, nor by the motives of BDC, but had again carried out a thorough check for compliance with the law. As a result, SCA did not discuss the grounds for refusal by RA and BDC at all and did not pay attention to the arguments set out in the appeal. It formulated new grounds for refusal which are different from those of RA and BDC and are of an exclusively technical nature. According to SCA, the protocol submitted with the application for registration indicates the place and time of the establishment of the organization (28.05.2022,

188 SAC. Decision No631/11.10.2022 under case file No791/2022
189 RA. Refusal No2022603150735/07.06.2022
190 BDC. Decision No66/17.06.2022 under case file No139/2022
Blagoevgrad), but not exact time and exact place where this happened. It was therefore impossible for the court to assess whether there is a simultaneously expressed will on the part of the required number of founders. This was sufficient grounds for the court to refuse registration of the association. Secondly, according to SCA the provision of art. 8, para. 3, 4, of art. 9, para. 2, 8 and of art. 11 of the Statute of the organization does not make it clear who approves the new members of the association – the Management Board, the General Assembly or the Management Board and the General Assembly. It is also not clear what is the role of the two guarantors, which are required by art. 11. Thirdly, the procedure for settling property relations in connection with the hypotheses under Art. 12 is not determined (the resolution probably entered erroneously Art. 8), para. 4, items 3, 4 and 5 of the Statute (in case of expulsion, termination of the legal entity and in case of dropping out due to non-payment of membership fees or non-participation in the activity). The above “problematic”, according to SCA, provisions in the Statute of the Association are literally copied from the statutes of registered organizations who have had no problems connected with them during the registration proceedings. They have not arisen before RA either, which is why the Agency has not made any recommendations to correct any shortcomings in the constituent documents. Obviously, SCA is seeking to justify its discriminatory attitudes, demonstrated in dozens of other cases for registration of Macedonian associations, by inventing formal problems in order not to show them in yet another of its decision.

On two occasions in 2022, CMCE examined the bundle of cases OMO "Ilinden" and others against Bulgaria. In March, CMCE expressed deep concern about the continued practice of refusals to register such associations on grounds that had been examined and rejected by the ECtHR. CMCE recommended that the government should prepare guidelines for improving the practice of RA and ensure that requests for registration would be dealt with in accordance with art. 11 of the Convention. CMCE examined this bundle of cases for the second time in December. The Committee noted the continuing practice of refusals to register Macedonian associations on grounds that have been considered and rejected in ECHR practice, and regretted that "more than 16 years after the first decision by this bundle, associations aiming at “achieving recognition of the Macedonian minority” are routinely denied registration mainly because of the more general problem of rejecting their goals and they are faced with a continuing practice of the authorities to bring forward new grounds for refusal, even though the registration documents have been checked time and time again.” CMCE declared its readiness in the absence of tangible progress before its meeting in September 2023, to invite the President of the CMCE to send a letter to the Bulgarian authorities to call on them to find quick solutions for full and effective compliance with their obligations, arising from the ECtHR’s decisions in these cases.

191 SAC. Decision No632/12.10.2022 under case file No713/2022
192 CoM. 1451st meeting, 6-8 December 2022 (DH), H46-8 United Macedonian Organisation Ilinden and Others group v. Bulgaria.
Chapter 10. Conditions in Places of Imprisonment

Prisons

Number of prisoners and overcrowding

In 2022, the number of prisoners in Bulgaria continued to decrease. Thus, the average number of inmates listed in prisons and prison dormitories in 2022 was 5,746, which is 7% less than the average number in 2021 and 41% less than in 2011 (Figure 1).

![Average number of listed prisoners in penitentiary facilities by years, 2011 – 2022](image)

Source: General Directorate "Execution of Penalties" (GDEP)

According to government data, as of 8 June 2021, the capacity of the penitentiary system (prisons, prison dormitories and correctional institutions) is estimated at 8,161 places. If this number is taken as a starting point for calculating the overall population rate of prisons, in 2022 it was 70%.

The number of prisoners at the end of the year also decreased, with 5,553 inmates placed in prisons as of 31.12.2022, of which 1,598 were accommodated in open-type prison dormitories. In 2021, the number of people accommodated in open-type prison dormitories was 932. The changes in the legislation in 2017 have expanded the perimeter of convicted persons who are initially placed in open-type dormitories for serving the sentence, instead of

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193 GDEP. Decision No1-277/2 of 17.01.2023 in response to an inquiry under the APIA from the BHC.
195 ibid.
in closed prison buildings. The regime in open-type dormitories provides more opportunities for work, and hence – to reduce the term of penalties (two days of work is considered three days of imprisonment). At the end of 2022, the share of imprisoned prisoners in open-type prison dormitories relative to the total prison population was 29%, compared to 18% in 2016, just before the regulatory changes197 (Figure 2).

Figure 2

![Share of inmates placed in open-type dormitories against the total number of prisoners, by the year, as of 31 Jan 2012 – 2022](image)

Source: GDEP

The overall drop in the number of prisoners in Bulgaria and their more even distribution in prisons and prison dormitories has led to the overall non-overcrowding of prisons in 2022. However, several visits of BHC researchers to separate prisons have shown that overcrowding, i.e., non-compliance with the legal standard of 4 square meters per prisoner, is occurring for separate groups and in separate cells.

In addition to convicted persons, the prisons accommodate accused persons and defendants in custody, under detention measures. On December 31, 2022, their number was 431198, i.e., 12% less than at the end of 2021.

It should be noted that the drop in prison population rates in recent years is not due to an increase in the number of early parolees, released by the courts. Except for 2017, when the possibility for convicts to apply for early release was introduced, the share of early releases compared to all released for the respective year in Bulgaria is steadily decreasing. In 2022, only 238 prisoners have taken advantage of the early release institute. In 2021, they were 652,

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197 The calculations are made by the BHC and are done on the basis of information received under the APIA in the respective years.
198 GDEP. Decision No1-277/2 of 17.01.2023 in response to an inquiry under the APIA from the BHC.
accounting for 12% of all released during that year, 199 while ten years earlier there were 1,229, or 20% of those released on all grounds during the year.200 BHC’s observations in 2022 are that once again, it is mostly prisoners with small remnants of punishments, whose release was proposed or supported by the head of prison, were released.

In December 2021, the Council of Europe’s Penitentiary Statistics for 2021 was published, and in December 2022, it was updated. According to most statistical indicators for 2021, including prison population rate and prisoner-to-staff ratio, Bulgaria is at or close to the European averages.201 According to the Council of Europe’s data on the distribution of custodial sentences according to the crimes for which they were convicted, the largest share of prisoners in Bulgaria are serving a sentence for theft, with 25.9% of those convicted with such a sentence in prisons.202 The long-term trend in the country, however, is a decreasing percentage of prisoners convicted of theft, out of the total prison population – in 2007, 54.5% of prisoners were convicted of theft.203 The next largest shares are those serving a sentence for robbery (15.2%) and for transport crimes - 14.4% of the prison population.204 The latter share is significantly above the average for the Council of Europe member states (4.5%). Bulgaria is clearly lagging behind in terms of the amount of daily subsistence per prisoner. With an average European cost of 156.9 euros per day per prisoner in 2021, in Bulgaria this amount is only 6.5 euros.205 Only in Russia the value was lower – 2.63 euros per day.

The number of people who died in prison in 2021 is 30, there were no suicides.206

Material conditions
In 2022, BHC carried out a small number of visits to prisons and prison dormitories. However, the organization received a large number of letters from prisoners, in some of which they describe the conditions in which they are serving their sentences. In turn, several reports by the Ombudsman such as a NPM (National Preventive Mechanism) on visits to prisons and prison dormitories were published during the year.

200 BHC. Human Rights in Bulgaria in 2021, p. 79.
202 Ibid., p. 50.
205 Ibid., p. 130.
206 GDEP, Decision No1-277/2 of 17.01.2023 in response to a request from the BHC under the APIA.
Prisons in Bulgaria differ significantly in the material conditions they provide to prisoners for serving their sentences. In some of them, such as the Kremikovtzi Prison Dormitory at Sofia Prison, the conditions in most of the dormitory can be defined as inhuman and degrading. In others, such as the Prison of Sliven and the Prison of Stara Zagora, the material conditions are generally good. Although in some places of imprisonment (such as the Sofia Central Prison) some of the cells provided a smaller area than the legal standard of 4 square meters per prisoner, most of the prisoners' complaints were not related to overcrowding. With regard to material conditions, complaints were most often related to the poor state of facilities in some of the prisons, poor hygiene and the infestation of bedbugs and cockroaches. During their visit in May to the Plovdiv Prison, NPM found particularly serious problems with the outdated facilities in this prison, especially in the reception ward, where the delegation found the presence of damp, mould, limited access to daylight and poor condition of the flooring. All buildings of Hebros OTPD were in poor general condition. The material conditions in the Smolyan Open-Type Prison Dormitory (ITPD) were significantly better. Problems with the water supply in some prisons, such as the one in Bobov Dol and in Kremikovtzi PD, persisted in 2022.

A particularly serious problem in penitentiary facilities is the invasion of bedbugs. BHC found this problem in all the institutions it visited. During its visit to the Razdelna PD in December, BHC became aware of the case of a prisoner who got bitten by bedbugs so badly that it was necessary to administer the drug Medrol because of his allergic reaction. During its visit to the Kazichene PD in December, BHC got acquainted with the case of a prisoner who was bitten by bedbugs all over his body. It was dotted with red spots. Guards confirmed that they were from bedbug bites and said that the insects were "especially fond of him." During their visit to the Plovdiv Prison in May, the NPM inspection team also reported "numerous complaints about the presence of cockroaches and bedbugs".

During their visit to Pleven Prison, a team of NPM found a serious problem with the continuous surveillance with video cameras of the cells in the high security area. In this area, the walls of the cells to the corridor are replaced with bars, and video cameras are installed in the corridor itself, which are directed to the cells. They watch everything in the cells, including toilets that are partitioned to a height of less than 1 meter, rather than up to the ceiling.

208 Ibid., p. 2.
the past, BHC had repeatedly expressed concern about this situation in the high security zone in Pleven Prison, including in letters to state institutions.

During the year, many prisoners complained to BHC about the imposition of seizures on their accounts by bailiffs, because of outstanding debts, arising as a result of conviction sentences. The latter are most often in criminal cases, as a result of which they are serving prison sentences. Part of the seizures relate to receivables by the state. The seizures are on all amounts which prisoners receive, including those sent by their relatives. As a rule, prisoners are not notified of these seizures, as they are formally on prison accounts in which they have their own lots. Therefore, prisoners cannot challenge them promptly in accordance with the procedure laid down by law. The lack of any means for prisoners leads to the inability to meet their basic hygiene and health needs. This is a particularly serious problem for those of them who do not have relatives to send them parcels. In this regard, in September 2021, the CMCE requested Bulgaria to analyse whether the seizure of money in prisoners' accounts affects their access to basic hygiene supplies and, if it is found so, to ensure either the termination of these practices or effective access to consumables at the expense of the prison administration.210

In 2022, BHC continued to receive complaints from prisoners about high prices, low quality, and limited range of goods in prison kiosks. However, prisoners are forced to shop there, because by order of the Minister of Justice, during visits they cannot receive goods that are offered, or should be offered, in the kiosks. The situation is further complicated by the practice of freezing the amounts in the personal accounts of prisoners, sent to them by relatives. This leads to a situation where prisoners can neither receive these items during visits nor have the means to purchase them from the kiosk.

Medical service

In 2022, as before, medical care remained one of the most serious problems in prisons. The problems concern the initial medical examinations, the lack of adequate medical care in prisons, the large delays in referral to external specialists and external hospitals, the lack of access to medicines for prisoners, the critical state of penitentiary hospital care.

The main reason for inadequate medical care in places of imprisonment is insufficient medical staff. This problem has been repeatedly identified by BHC, the NPM and PI (Performance Indicators). In 2022, despite efforts in some of the prisons, it was generally not resolved. During their visit to the Prison of Plovdiv in May, the NPM found a shortage of

medical staff to provide decent quality and timely medical care to inmates in prison.\textsuperscript{211} During their visit to the Pleven Prison, the NPM found a similar shortage of medical staff – two general practitioners working on a half a workday, twice a week basis, one paramedic and an unfilled payroll position of a nurse.\textsuperscript{212} Similar and even worse is the situation in the majority of prisons and prison dormitories.

Lack of access to medicines for prisoners can lead to life-threatening conditions or permanent disability. In many cases, prisoners have to buy medicines with their own funds, and if they do not have them or if they do not have support from their relatives, they remain without therapy. Thus, during their visit to the Prison of Plovdiv, in May, NPM described the case of a prisoner with thrombophlebitis of the lower extremities, who had been prescribed therapy but that was not being administered and he was left without medication due to money shortages, and the prison administration was not willing to buy the medicines.\textsuperscript{213} During BHC’s visit to the Kazichene OTPD in December, a prisoner who had been transferred to serve his sentence from the United Kingdom complained that he had to buy a life-sustaining cancer drug, which in the UK he was provided for free, while in Bulgaria he had to pay BGN 230 for it every ten weeks. This amount can only be secured thanks to the support of his family, because the work he does in prison is voluntary. During the year, BHC received complaints from many other prisoners who have to provide their own medicines for serious diseases, because, although they are insured, the National Health Insurance Fund (NHIF) either does not cover at all or does not fully cover their purchase. This is a particularly serious problem for prisoners in need and for those who do not get support from loved ones.

During the year, BHC continued to receive complaints from prisoners about the medical care at the Specialized Hospital for Active Treatment of Prisoners at Sofia Prison. BHC has repeatedly expressed its concern about the condition of this medical institution, which in 2015 and 2021 was inspected by the Medical Supervision Executive Agency with the Ministry of Health. The inspection found that the activity of the medical institution did not comply with basic regulatory requirements and mandatory medical standards.\textsuperscript{214} The Agency issued numerous recommendations, which were not fully implemented in 2022.


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Abuse

The observations of the BHC in 2022 on the use of force and aids by the supervisory staff in prisons do not give grounds for significantly different conclusions compared to previous years. Abuse of prisoners by guards is much less common than in police custody. However, it remains as unpunished as the abuse by police. In 2022, the BHC received several complaints from prisoners about ill-treatment by guards, to whom it recommended that formal complaints be made to the competent prosecutor’s office. In none of these cases were pre-trial proceedings instituted, and the applicants were not notified of the progress of the investigations. They eventually refused to appeal the refusal orders or were dissuaded from doing so.

Violence between prisoners is more common. It most often leads to disciplinary sanctions and, in rarer cases, to the initiation of pre-trial proceedings. In most of these cases, these are minor bodily injuries, which, when not inflicted by an official, are prosecuted on the basis of the victim’s complaint. This vicious system places an enormous burden on victims, who must provide their own funds to hire a lawyer, gather evidence, and file a case in court. Because of this, inmate violence most often ends with disciplinary punishments for the perpetrators.

Special mode

The legislation on the special regime was not amended in 2022. Life prisoners, with rare exceptions, are subject to such a regime, i.e. in permanently locked cells located in the high-security areas of prisons, isolated from other inmates and usually without access to activities other than an hour outdoors. In very rare cases, some of them have the opportunity to work in their cells. Many prisoners serve their sentences under such a regime for more than 20 years. By the end of 2022, there were 179 people serving life imprisonment and life imprisonment without parole – the same number as in 2021. Of these, 56 were sentenced to life imprisonment without parole.215 In the period 2017 – 2022, there are no newly admitted persons sentenced to the heaviest punishment. The amendments in the legislation in 2017 made it mandatory for prison chiefs to review the regime of prisoners serving life sentences every year. In the vast majority of cases, however, the review does not lead to changes. The amendments also introduced judicial review of the special regime extension orders before the administrative courts, but these courts are also reluctant to overturn the orders.

The detained accused and defendants charged with a crime punishable by imprisonment of 15 years or more are isolated under an identical regime. The regime applies regardless of the individual risk of the detainees and is not subject to review, although solitary confinement can last for years.

215 GDEP. Decision No. 1-277/2 of 17.01.2023 in response to an inquiry by the BHC under the APIA.
Remedies

Following the introduction in 2017 of preventive and compensatory remedies against inhuman and degrading treatment in places of detention, these remedies have been increasingly used by prisoners. According to GDEP, 64 lawsuits were initiated in 2022 (vs. 52 in 2021) for the use of the preventive remedy and 432 lawsuits (vs. 299 in 2021) for the use of the compensatory remedy. However, the effectiveness of these remedies remains questionable. The preventive remedy, an immediate judicial procedure by which the administrative court can order the prison administration to take measures to stop or prevent inhuman or degrading treatment, has resulted in only 4 court orders. 140 claims were granted of the 432 court cases initiated for the use of the compensatory remedy. The review of the case law for 2022 reveals, as in previous years, serious problems with the amount of the compensations. In many cases, they are low, leaving the prisoners victims of inhuman and degrading treatment and opening the way to appeals to the ECtHR. Prisoners do not receive legal aid to prepare their claims before the administrative courts. As a result, a large number of the claims are not well drafted or do not relate to the relevant statutory provisions and are rejected either on admissibility or on the merits. The review of judicial practice also found that there was not a single initiated case for the prevention of inhuman or degrading treatment in 2021 addressing the conditions or treatment of detainees remanded into custody. This reinforces the impression from previous years that detainees do not use the preventive remedy to improve their situation at the pre-trial phase, although the conditions in pre-trial detention centres are much worse than those in prisons. The main reason is the lack of better accommodation alternatives to the places where they are detained, and the only real prospect is moving them to another city, where they will be deprived of regular contact with their lawyers and relatives. Additional factors preventing detainees from using this remedy are possible victimization, lack of information about the remedy, and high levels of illiteracy among detainees.

During its visits to prisons in 2022, the BHC heard complaints from inmates who claimed to have been victims of victimization because they used the preventive or compensatory remedy. Victimization took different forms – negative personal references during the parole proceedings; reluctance of the prison administration to change the regime of imprisonment of the prisoner; not providing an opportunity to work; excessive severity in the application of disciplinary measures. In one case, an inmate from the prison dormitory in Kazichene complained that he had been suspended from work because of the case he filed against the prison.

216 Ibid.
Detention centres

By the end of 2022, the number of detention centres in the country was the same as in 2021 – 26. During the year, one detention centre was closed (the old detention centre in Blagoevgrad) and a new one was opened (also in Blagoevgrad). The total number of people detained in custody in 2022 was 11,308 compared to 10,795 in 2021. The number of foreign nationals held in custody was 2,117, 30% more than in 2021, when it was 1,469. The increase can be explained by increased migration pressure and the higher number of people detained for illegal border crossing. Juveniles held in custody in 2022 were 235 versus 126 in 2021, and females 394 versus 388 in 2021. The average number of detainees in the system was 876, slightly higher than in 2021 when it was 871. However, the number of persons detained on 31 December showed a significant increase compared to previous years (chart 3).

Chart 3

Number of persons detained in custody on 31 December by year, 2002 - 2022.

Source: GDEP

According to GDEP data, the length of detention in detention centres in the past year is as follows:

- up to 72 hours – 1874 persons;
- up to two months – 8822 persons;
- from two to six months – 2026 persons;
- more than six months – 611 persons.

The increase in the length of detention compared to 2021 affects all groups, but it is particularly worrying for those detained for more than two months, as the conditions in

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217 GDEP. Decision No. 1-277/2 of 17.01.2023 in response to an inquiry by the BHC under the APIA.
218 Ibid.
219 Ibid.
Bulgarian detention centres are generally worse than those in the prisons. Again, according to GDEP data, overcrowding was observed in the detention centres in Ruse and Elhovo during that year.\(^{220}\)

In a number of detention facilities, the accommodation conditions do not meet the minimum standards of humane treatment. In a number of detention centres, the cells are not equipped with sanitary facilities, while others have no access to sunlight. The detainees in detention centres remain permanently locked in their cells with the exception of one hour - one hour and a half per day, intended for outdoor time and physical activity. Several detention centres have no places to stay in the open but only rooms adapted for walking. In many prisons, the cells are small, poorly ventilated, furnished very sparsely or with nothing but a bed, bed bugs, no possibility to participate in any activities.

In the BHC survey conducted in Bulgarian prisons in the period June - November 2021 with the participation of a representative sample of 1010 prisoners whose pre-trial proceedings had started after 1 July 2019 \(^{221}\), 48.7% of the prisoners answered that the available space in their cell in the pre-trial detention centre was between 3 and 4 sq. m, and 31.2% - that it was less than 3 sq. m. And 87.7% of the prisoners answered that during their detention they spent 23 or more hours in their cells, i.e. their only activity outside was the hour-long walk, which did not take place outdoors in some of the detention centres.\(^{222}\)

**Recommendations by the CPT**

In October 2022, the CPT published its report on its visit in the period 1 - 13 October 2021.\(^{223}\) During the visit to the penitentiary institutions, the Committee visited the Prison in Sofia, the closed-type Prison Dormitory of Kremikovtsi, the Prison in Plovdiv, the detention centre in G. M. Dimitrov Boulevard in Sofia and the detention centre in Plovdiv.

The CPT noted the positive developments in respect of the overcrowding and the physical abuse in the prisons and detention centres. The Committee received almost no credible allegations of recent deliberate physical abuse of prisoners by staff in the visited penitentiary institutions (with the exception of the Prison in Plovdiv). In general, the relations between the

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\(^{220}\) Ibid.

\(^{221}\) See above *Right to life, protection from torture, inhuman and degrading treatment.*


\(^{223}\) CPT. *Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022)20, Strasbourg, 18 October 2022.*
staff and inmates appeared relaxed and even almost cordial at times. However, the Committee found that there was violence among the prisoners in all he visited institutions.

Regarding the facilities, the CPT noted that the best facilities were in the pre-trial detention centre in Plovdiv and the worst – in most of the premises in the Prison Dormitory of Kremikovtsi. It recommended decommissioning of this facility. According to the Committee, cockroaches and bed bugs are a serious problem in all he visited institutions.

In terms of activities, the CPT noted that sentenced prisoners are offered some (mostly unpaid) work as well as some basic education. However, this is far from satisfactory. As for remand detainees, they stay in their cells for up to 23 hours a day without being offered any organized activities. The Committee insists on the provision of targeted activities for prisoners in all penitentiary institutions, including detention centres.

A serious problem according to the CPT is medical care, mainly due to acute staff shortages. The were no medical personnel present after regular working hours and on weekends in all of the visited penitentiaries. The CPT delegation also noted serious problems with the supply of medicines. It finds it unacceptable that prisoners or their families pay for most drugs, which also requires separate authorization. Access to psychiatric care is also inadequate, especially given the presence of many prisoners with mental health problems, some related to drug use.

Another serious problem that the CPT found is the facilities for persons with disabilities, which are inadequate in all of the visited institutions. The care for this category of prisoners is also inadequate. As a result, some of the affected prisoners are forced to rely on the help of their cellmates and other prisoners to meet the most basic needs of life, such as eating, washing and using the toilet. The CPT recommends that the Bulgarian authorities take steps to correct this extremely unsatisfactory state of affairs.

The Committee is also concerned about the working conditions of the staff in the penitentiary institutions, and in particular the excessively long 24-hour shifts. This does not enable employees to work effectively, it undermines the quality and level of activities and increases the risk of violence.

Chapter 11. Protection against discrimination

In the summer of 2022, the term of office of the members of the CPD expired, but in view of the political situation and the constitutional decision under a similar case\(^2\), they continued their activity. The institution’s official website remains in a deplorable state: it is difficult to search for information on the Commission practice, there is a lack of adequate

\(^2\) CC. Decision No. 12 of 27.09.2022 under constitutional case No. 7/2022, available at: https://constcourt.bg/bg/act-9382.
analyzes allowing the affected persons and their lawyers to orientate themselves on the standards that the body applies when making decisions on complaints and reports. Poorly addressed complaints presuppose poorly motivated decisions, respectively a Commission practice vulnerable to judicial appeal. A negative consequence of this trend is the judicial annulment of the decisions of the CPD on formal grounds, due to procedural violations and the return of the files for a new examination; thus, the courts do not make a ruling on the substance of the questions raised and the proceedings are delayed for months and years, repeatedly and inefficiently committing the resources of the Commission and the courts to re-examine the cases again and again. The lack of rulings on the merits by the supreme judges in cases concerning well-known statements of public figures, where the question disputed in the case is: whether they constitute hate speech or not, is especially acutely felt. As a result of these trends, the case law is inconsistent and contradictory. Nevertheless, the positive trends in the practice of the CPD and the courts are maintained in their rulings on the inaccessibility of the architectural environment as a violation of anti-discrimination legislation.

The big event of 2022 is the landmark conviction of our country by the ECtHR in the case Paketova and others v. Bulgaria for violating the ban on ethnic discrimination – this time for the expulsion of dozens of Roma families and the prevention of their return to their homes in the Plovdiv village of Voyvodinovo in the winter of 2019. The national body, i.e. the CPD also found a violation of the anti-discrimination legislation by the mayor of the village and imposed a fine on him. At the same time, the mythical bill to amend and supplement the Territorial Planning Act, the Municipal Property Act and the State Property Act, related to the implementation of the decision in the case of Yordanova and others v. Bulgaria, has remained secret for the fifth year in a row, and the discussions regarding that bill, according to the MRDPW, is being delayed “given the situation in the country in 2021 and 2022”.

This analysis has used information obtained under the APIA from the CPD, the MRDPW and the Ministry of Justice, from the legal information systems of "Apis Europe" and "Siela Norma" and publicly available data on the official websites of the courts.

Scholarships for Roma children

In August 2022, the Administrative Court - Sofia-city declared the nullity of the decision, with which the CPD found for the second time that the state’s positive measures to promote

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225 See Right to respect for private and family life, home and correspondence.
226 ECtHR. Yordanova and others v. Bulgaria, No. 25446/06, Judgment of 24 April 2012, available at: https://hudoc.echr.coe.int/eng?i=001-110449). In the grounds of its decision under case Yordanova and others v. Bulgaria, § 159, ECtHR emphasizes that „the Court cannot exclude furthermore that a failure to react to discriminatory attitudes and statements could amount to a violation of Article 14 in conjunction with other Convention provisions, including Article 8”.
227 ACSC. Decision No. 5381 of 30.08.2022 under administrative case No. 11317/2021.
the access of Roma students to education did not constitute a violation of anti-discrimination legislation.

**According to the Bulgarian courts, the positive measures owed by the state, aimed at promoting the education of the Roma, constitute discrimination against other students who are of non-Roma origin.**

The court’s reasons are that “precisely by providing scholarships to children of Roma origin, the Ministry of Education and Science and CEICSEM [the Center for Educational Integration of Children and Students from Ethnic Minorities] allowed discrimination against all other children in Bulgaria, who are not of ethnic Roma origin”. For the second time, the court did not find that the provision of financial means, tied to certain minimum grades, is a proportionate measure to keep Roma children in school. According to the court, there are other measures, which the court did not specify, which are suitable for achieving the goal, but do not lead to discrimination against students of non-Roma origin. The court emphasized that “the non-attendance of Roma children at school is not solely due to the lack of funds”, but the reasons are "different and are related to the lack of motivation among students, unwillingness to learn, etc. and it is precisely on these causes that efforts should be concentrated'. The case law in this sense illustrates ignorance not only of international standards in the field of protection against discrimination, but also of Bulgarian legislation - Article 10 and Article 11 in connection with Article 7, paragraph 1, item 17 of the Law on Protection against Discrimination (LPD), which expressly exclude the measures in the field of education and training to ensure the participation of persons belonging to ethnic minorities from the circle of discriminatory acts to the extent and as long as these measures are necessary. A very superficial and only formal assessment was made in the court decisions on the case concerning the scholarships for Roma seventh-graders as to whether and to what extent such measures are necessary and effective for overcoming ethnic inequality. The case is about to be considered for the third time by the CPD, this time it is bound by the court’s instructions and it must establish in practice discrimination where there is clearly no such discrimination.

**Air disinfection of a densely populated Roma neighborhood**

At the beginning of the year, the CPC found that the mayor of Yambol municipality, violated the prohibition of discrimination and carried out direct discrimination on the grounds of "ethnicity" in relation to an unspecified, but definable group of persons inhabiting the specified neighborhood in the town of Yambol with the actions he took during the COVID-19 pandemic for air disinfection over only one residential quarter of Yambol - the one with a dense Roma population for which he was fined BGN 500. Only a year later, the courts surprisingly decided the case definitively on the merits, taking a diametrically opposite position – that there was no discrimination in the case.

**According to the courts, the aerial spraying of disinfectants against COVID-19 only on the Roma population in Yambol who live separated in a separate district does not constitute**
discrimination, as it falls within the legal powers of the mayor of Yambol and aims to protect the health of the population.

Refusal to enter a blind manager in the commercial register

In 2021, the CPD established that by refusing to enter a blind person in the commercial register as a manager of a commercial company, the registration official violated the prohibition of discrimination on the grounds of "disability", for which the official was fined BGN 250. The case concerns a blind person who submits a notarized consent to be a manager for entry in the register, and the notary certified on the document that, due to blindness, the declarant put an imprint of the right hand instead of a signature. At the end of 2022, the case was finally resolved on its merits by the courts, which overturned the Commission’s act, finding that there was no discrimination in that case. What is interesting in this case is that the courts from the two instances adopted two completely different, but equally wrong, approaches. The court of first instance motivated its act with the application of Article 7, paragraph 1, item 2 of the LPD, finding that blind persons cannot be managers of commercial companies due to the nature of this work. Thus, in practice, the first-instance court decision establishes unequal treatment, but it is assumed that its purpose is legitimate. The Supreme Administrative Court reached the same conclusion – that there was no violation, but on the grounds of other considerations: using for comparison cases in which an official refused registration – due to the failure to present a specimen of the signature – also to persons who did not have the protected characteristic feature of "disability". Thus, the supreme judges deny at all that there is unequal treatment on the grounds of "disability" in this case. The first-instance decision is not in accordance with the pra
actice of the Court of Justice of the European Union (CJEU), according to which "it is not the ground on which the difference of treatment is based but a characteristic related to that ground which must constitute a genuine and determining occupational requirement" (C-258/15, § 33 and C-824/19, § 44). Presuming that the presence of a disease or disability in all cases deprives a person of certain qualities is unfounded and is a manifestation of discriminatory attitude. The decision of the cassation court is not subject to comment.

Can a juror be visually impaired

The case concerns a blind juror who, in the period 2015-2016, due to her disability, was not allowed to participate in criminal proceedings in Sofia District Court by the judge to whom she was assigned. In 2017, the CPD established a violation. The decision of the Commission was confirmed at first instance. In the cassation review, the SAC made a preliminary inquiry to the CJEU, which ruled that EU law must be interpreted in the sense that it does not allow a blind person to be deprived of any opportunity to serve as a juror in criminal proceedings. In 2022, the SAC returned the case of the CPD for a new ruling.\textsuperscript{228}

\textsuperscript{228} CJEU. Решение от 21.10.2021 по дело С-824/19.
Controversial statements of Bulgarian politicians

The proceeding regarding Krasimir Karakachanov’s statement "Gypsies have become extremely insolent" in connection with the events in the village of Voyvodinovo at the beginning of 2019, when he was Minister of Defence and Deputy Prime Minister for Security and Internal Order, continue for the third year in a row. The case was already considered once by the SAC, which, however, refused to rule on the merits of the case and returned the file to the CPD.

The court proceedings for the statement of Valery Simeonov, acting as Deputy Prime Minister for Economic and Demographic Policy and Chairman of the National Council for Tripartite Cooperation continue for the fourth year in a row: "This law was started as an attempt to please a group of shouting women who speculated with their children, manipulated the society, taking these supposedly sick people out in rain or shine without an ounce of motherly feeling or care for them". The case was already considered once by the SAC, which, however, refused to rule on the merits of the case and returned the file to the CPD.

The courts refuse to address the substantive question of whether the statement of the Deputy Chairman of the National Assembly to a minister is sexist: “We wouldn’t hire someone like her even as a cleaner in our office”.

Last year, Varna Administrative Court’s judgment, confirmed by the SAC\textsuperscript{229}, overturned a decision whereby the CPD found a violation and imposed a fine on Veselin Mareshki, Deputy Chairman of the National Assembly at that time, for sexist speech in a Facebook video message of 5 September 2020, referring to the then Minister of Social Affairs Denitsa Sacheva: “We wouldn’t hire someone like her even as a cleaner in our office”. The reason for the statement was her disapproval of Mareshki’s actions: to sign the draft for a new Constitution without having read it. The courts justified their decisions by pointing to the failure of the Commission to indicate the factual and legal grounds of its act. What deserves special attention in this case is the fact that neither court decision cited at least once the statement in question. Given the publicity of the statement – the subject matter of the proceedings – and in view of the powers of the courts (see Art. 173 and Art. 222 of the Administrative Procedure Code), the question of why the courts categorically refuse to rule on the substance of the legal dispute is particularly pertinent. SAC has been consistent in its practice and is particularly cautious when it comes to public statements by Bulgarian politicians. Thus, in addition to delaying cases, development in this area of anti-discrimination law remains at a standstill as there is no possibility to introduce standards. The amount of costs awarded for the cassation in favor of Veselin Mareshki is also unusual and startling – BGN 1,200.

\textsuperscript{229} Administrative Court - Varna. Decision No. 167 of 17.02.2022 under administrative case No. 2515/2021; SAC. Decision No. 10493 of 18.11.2022 under administrative case No. 4682/2022, V о.
The age limit for assisted reproduction as discrimination

In July 2022, the SAC repealed provisions of the rules on the organization of the work and activities of an assisted reproduction centre with which the Minister of Health introduced an age limit (45 years) on access to assisted reproduction. The repealing is justified with the lack of reasons for the adoption of the restriction, which “does not enable the interested parties to understand why the authority adopted this particular age limit, nor the court to review the legality. In addition, it is inadmissible to justify an administrative act, be it individual, general or normative, only during the judicial review of its legality”. In its reasons, the SAC missed the opportunity to discuss the case through the prism of anti-discrimination law, although the arguments of the applicant in the case were put forward to that effect.

Non-reimbursement of life-saving medical devices as discrimination

At the end of 2022, the courts finally confirmed the conclusion of the CPD that, having failed to take measures to include the disease spina bifida in the list of diseases for the at-home treatment of which the National Health Insurance Fund pays for medicinal products, medical devices and dietary foods, the Minister of Health has performed discrimination on the grounds of "disability".

Inaccessible architectural environment

The CPD and the courts have a positive and consistent practice to detect architectural environment that is inaccessible for people with disabilities\(^{230}\) on the grounds that the requirement of Art. 5 of the LPD, as well as of Art. 9 of the CRPD for providing an accessible environment is absolute, and maintaining such an inaccessible environment always constitutes a violation of anti-discrimination legislation.

Cassation fees in anti-discrimination proceedings

The instigated interpretive case № 5/2021, according to which the General Assembly of Judges from the Colleges of the SAC must unequivocally decide whether a cassation appeal fee is due in discrimination cases, remained pending in 2022, and was scheduled to be heard in a closed session on 27 April 2023.

\(^{230}\) SAC. Decision No. 1312 of 07.02.2023 on administrative case No. 6434/2022, V o.; Decision No. 929 of 27.01.2023 on administrative case No. 4190/2022, V o.; Decision No. 291 of 11.01.2023 on administrative case No. 3243/2022, V o.; Decision No. 11862 of 20.12.2022 on administrative case No. 5167/2022, V o.
Conclusions and recommendations

It is extremely imperative that the renewal of the composition of the CPD be carried out after careful selection and in compliance with the principle of the competition, by selecting senior professionals renowned not only in Bulgaria, but also at the international level in the field of anti-discrimination law. The current unprecedented situation, with the expired powers of the anti-discrimination body, is an occasion to carefully weigh the pros and cons of the mandate and the political choice of its members. In addition, the future chairman faces the long-overdue technological introduction of the Commission into the 21st century by building a user-friendly website containing a database of the practice and activities of the CPD since its establishment to the present day.

Chapter 12. Right to asylum and international protection

As a result of Russia’s military aggression against Ukraine, a large number of Ukrainian refugees arrived in Bulgaria. They were well received and accommodated in hotels and other bases throughout the country. Along with them, refugees from other countries continued to seek protection in this country. The tenure of the caretaker government, which was appointed after the ouster of the regular government by a vote of no confidence on 22 June 2022, has been characterized by inaction to open opposition to any positive measures in support of refugees and their protection, culminating in the amendments to the Programme for Humanitarian Assistance to Displaced Persons from Ukraine with Temporary Protection adopted on 16 November 2022. These amendments severely limited state-funded housing options and completely canceled state food support for those displaced by the war in Ukraine. This caused many Ukrainian refugees to leave the country, and as of 31 December 2022, out of a total of 149,268 Ukrainians registered under temporary protection, only 49,704 persons displaced by the war in Ukraine remained in this country.

Access to protection

According to national law231 access to international protection can be obtained through access to the territory of the country through its borders and access to the proceeding for provision of international protection, conducted by the specialized administrative body, the State Agency for Refugees (SAR).

Access to territory

In 2022, Bulgaria implemented two diametrically opposed approaches in providing access to the territory to persons seeking asylum and protection. Immediately after 24 February the

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231 Asylum and Refugees Act (ARA, promulgated State Gazette 54 of 31.05.2002), Article 58, par. 4 and 6.
regular government and the General Directorate of Border Police adopted instructions that ensured access to the territory to all displaced persons from Ukraine, regardless of the possession or regularity of their documents. Within one month, 1,755 employees of the Ministry of Interior were trained and mobilized to support the process of registration of Ukrainian refugees, for which a connection to the automatic information system of the SAR was provided. Registration points for temporary protection were organized not only in the four SAR reception centres in Sofia, Harmanli, Banya and Pastrogor, but also in all regional police departments throughout the country, which facilitated and accelerated the access to registration and protection. In this way, Ukrainian refugees who declared that they wanted to use temporary protection in Bulgaria were immediately registered and also immediately received a document granting temporary protection. As of 31 December 2022, a total of 997,344 Ukrainians had gained access to the territory of Bulgaria, of which 149,268 people registered as persons with temporary protection.

On the other hand, migration pressure from the south continued to increase, mainly from citizens of Syria, Afghanistan, Morocco and Iraq. If in 2020, 3,487 migrants entered the country, and in 2021 – 10,799 migrants, in 2022 this number rose to 16,767 migrants. Accordingly, the number of persons seeking international protection rose from 3,525 in 2020 to 10,999 in 2021 to reach 20,407 asylum seekers in 2022 – an increase of 86% compared to 2021 and 481% compared to 2020. This led to a significant increase in the practice of pushbacks, and the national monitoring mechanism for monitoring the border in 2022 noted another dismal record of 5,268 alleged pushbacks affecting 87,647 individuals. Verbal and physical abuse reported since 2015, as well as the degrading practices of strip searches and illegal confiscation of clothing and belongings, have reached epidemic proportions. At the same time, however, an undetermined number of migrants continued to enter, transit and exit the country. Since the middle of the year, a number of incidents that received wide publicity have made it clear that a significant number of migrants, including in large groups, manage to illegally cross the border, enter the country’s territory, be loaded onto various vehicles and cross the country on the way mainly towards the borders with Serbia and Romania, which is impossible without the passive or active complicity of the authorities responsible for border control, prevention of illegal migration, national security and prosecution and punishment of smuggling and human trafficking. According to FRONTEX data, the increase in the numbers of those entering Europe via the Eastern Mediterranean route was 108% (42,831 migrants), and via the Western Balkans route the increase was 136% (145,600 migrants).

232 Tripartite Memorandum of Understanding and joint cooperation and coordination to support the access of persons seeking protection to the territory of the Republic of Bulgaria and to proceedings for granting protection in the country, concluded on 14.04.2010 between Chief Directorate Border Police of the Ministry of Interior, the United Nations High Commissioner for Refugees and the BHC.

Access to procedure

Asylum seekers detained at the borders generally did not have guaranteed access to a procedure, as only 2% of them were granted direct access and accommodation in a SAR reception centre without first being sent and detained in a Mol deportation centre. On the other hand, however, the access to procedure for asylum seekers who managed to enter the country and reach SAR registration centres without being detained by the police improved significantly. In the past years, the Agency refused to register such asylum seekers, but reported them to the police, who detained them in the deportation centres of the Ministry of the Interior. In 2022, the SAR almost completely stopped this practice, and of all 20,407 walk-in asylum seekers, only 0.5% (94 people) were issued refusal of registration and were detained. The illegal conduct of registration and procedure in the deportation centres of the MoI was almost stopped, and during the whole year it was applied to only two persons seeking protection.

The SAR’s practice, first introduced in 2015, of registering asylum seekers in police detention centres in order to meet the registration deadline, as well as conducting proceedings and serving decisions in these detention centres, was not sanctioned by national courts, which was generally perceived as a minor violation of proceedings rules. In 2022, the SAR almost completely ceased this illegal practice, inasmuch as only one registration was made and only one proceeding was conducted with serving of a decision in a police detention centre.

The average length of detention in 2022 continued to decrease and reached 4 working days or 6 calendar days. As a result, of all foreigners who applied for protection in a police detention centre, 87% were released on average 2 working days before the statutory deadline, and 0% were unlawfully detained for more than 6 months. This represents a 1% improvement in the compliance with the registration deadline compared to the previous year of 2021.

237 2021: 7 calendar/5 working days; 2020: 8 calendar/6 working days; 2019: 11 calendar/9 working days; 2018: 9 calendar/7 working days; 2017: 19 calendar/15 working days; 2016: 9 calendar/7 working days; 2015: 10 calendar/8 working days; 2014: 11 calendar/9 working days; 2013: 45 calendar/32 working days.
Quality of the proceedings for provision of protection

In 2022, the SAR registered 20,407 foreigners as persons seeking international protection, which represents an increase of 85% compared to the previous year.²³⁹

Abandonment of procedure and secondary movement

A total of 46% (14,474 persons) of all 31,592 asylum seekers with pending proceedings in 2022²⁴⁰ abandoned their procedures in Bulgaria. This represented a significant increase compared to 26% in 2021 and 39% in 2020, but still lower than 83% in 2019. Common reasons that motivate asylum seekers to abandon their asylum procedures in Bulgaria are their slow implementation, low recognition ratings for some nationalities, as well as poor admission conditions.

Length and quality of the refugee procedure

A total of 8,000 files with a prepared but unsigned decision were found on 1 April 2022²⁴¹ by the new SAR management (from 20 March 2022), some of which had delayed for more than 7 months. Of these, 4,700 files are draft decisions on merits, mainly concerning Syrian citizens. During the period January - March 2022, the SAR issued a total of 2,152 decisions, of which 16 decisions to grant refugee status, 789 decisions to grant humanitarian status, 87 decisions to refuse to grant international protection and 1,621 decisions to terminate the proceedings. Thus, in the first quarter of the year, the SAR issued an average of 837 decisions per month. From mid-April to mid-May, the SAR did not issue any decisions due to a hacker attack against its information system. In the period May - December 2022, the SAR issued 16,780 decisions, of which 84 decisions to grant refugee status, 3,485 decisions to grant humanitarian status, 358 decisions to refuse to grant international protection and 12,853 decisions to terminate the proceedings. This represents a 667% increase over the first quarter of the year, or an average of 2,097 decisions per month. The average length of the procedure in the second half of the year was reduced from 3 to 6 months. A number of improvements in the standards and quality of the international protection proceedings²⁴² were also observed, which affected the recognition and refusal ratings.

²³⁹ SAR. Annual statistics for 2021, 10,999 asylum seekers.
²⁴⁰ SAR. Annual statistics for 2022.
Ratings of granting and denying protection

For a long period, apart from Syrian nationals, recognition ratings for other nationalities were below 8%, and asylum seekers from certain nationalities, for example from Afghanistan and Turkey, were treated with discrimination as clearly unfounded with extremely low recognition ratings, respectively – 10% and 8 % of the decisions taken on the basis of their applications.\(^{243}\) In 2022 the overall recognition rating of decisions on merits rose to 91%.\(^{244}\) However, the rate of recognition of refugee status fell to 2%.\(^{245}\) The recognition rating of subsidiary protection (humanitarian status) increased significantly, reaching 89%.\(^{246}\) Refusals of international protection decreased to 9%\(^{247}\) of all substantive decision issued. For the first time in decades, asylum seekers from Afghanistan received non-discriminatory treatment with an overall recognition rate of 49% (14% refugee status and 35% humanitarian status) against a 51% refusal of protection. However, the majority of them (95%) continued to abandon their procedures in Bulgaria even before the decision of the refugee administration, as a substantive decision was made in only 0.7% of the applications.

Conditions for admission and integration

Accommodation centres

Since 2015, admission conditions in SAR accommodation centres have deteriorated below the required minimum standards, and the support provided has been limited to accommodation, food and very rudimentary medical care, but no specialized psychological or psychiatric services.\(^{248}\) With the exception of the refugee center in Sofia’s Vrazhdebna district and the safe zones for unaccompanied children, during this seven-year period all other centers were maintained solely in survival mode, experiencing recurring problems with infrastructure and facilities and not providing even basic living conditions, including basic personal hygiene and hygiene in the common and private premises.

At the beginning of the year, the SAR announced a total accommodation capacity in its centers for 5,160\(^{249}\) people, but in June 2022\(^{250}\) the new management informed that the actual accommodation capacity in the refugee centers was no more than 4,126 people, with the remaining 1,034 places located in premises unfit for living as well as that no funds were planned and set aside in the SAR budget for the repair of the facilities in 2022.\(^{251}\) The displaced

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\(^{244}\) 61% in 2021.

\(^{245}\) 4% in 2021.

\(^{246}\) 57% in 2021.

\(^{247}\) 39% in 2021.


\(^{249}\) 110th coordination meeting held at SAR on 10.01.2022.

\(^{250}\) 114th coordination meeting held at SAR on 16.06.2022.

\(^{251}\) SAR. Letter to BHC with reference No. RD05-72 or 26.02.2023
persons from Ukraine under temporary protection were not accommodated in the SAR centers, but used accommodation under the Humanitarian Assistance Programme adopted by the regular government. However, the 85% increase compared to 2021 in the number of newly arrived asylum seekers from other countries of origin, such as Syria and Afghanistan, further worsened the reception conditions situation, as the SAR’s 2022 budget for accommodation, food, medical and other aid was estimated for up to 10,000 people, while the actual number of new asylum seekers during the year was twice as large.

As of December 31, 2022, the sustenance for asylum seekers accommodated in SAR centers was provided under catering contracts concluded at the beginning of 2022 by the previous management of the Agency for a period of two years, in which the cost of the daily food allowance with three meals was priced at BGN 6.00 including VAT, i.e. 3.06 EUR. The term of these contracts expires at the end of 2023 with inflation only for 2022 estimated at 17%. Moreover, the amount of food to be delivered under these contracts is calculated on the basis of 15% occupancy of the SAR centers with an option for a maximum of up to 5% increase in the delivered food. This forced the new management of the SAR in the middle of the year to seek donations to supplement the necessary quantities to feed the asylum seekers in its centres, and the food provided to its largest centre in Harmanli in the period from 12 April to 15 May came entirely by donations. For these reasons, the asylum seekers complained in 2022 en masse not only about the quality of the food, but also about its highly insufficient quantity. Apart from the mobilization of donors, the other reason to avoid any critical malnutrition of asylum seekers in 2022 was the traditional mass abandonment of proceedings by asylum seekers from Afghanistan almost immediately after their registration, which has reached 95% on an annual basis. In 2022, asylum seekers from Afghanistan were the second largest group in Bulgaria after the citizens of Syria. The reason for the abandonment is the almost ten-year period of extremely low recognition rating of Afghan applicants for protection in Bulgaria, which varied between 0.1% and 1%, and which permanently disincentivized them to stay in the country to await a decision on their application for protection.

The necessary medicines and medical supplies, the organization of courses in Bulgarian language and the implementation of urgent repairs for the maintenance of the SAR building stock were paid for entirely with the outstanding funds under a project financed by the “Asylum, Migration and Integration” Fund that ended however on 31 December 2022. Due to a lack of funds in 2022 the SAR did not hold tenders for the supply of clothes, shoes and basic necessities for the persons accommodated in the centers. To meet these needs SAR

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252 Decision No. 145 of the Council of Ministers from 10.03.2022
256 9895 proceedings of asylum seekers from Afghanistan were terminated in 2022 out of a total of 10 414 Afghan proceedings (7164 applications submitted in 2022 and 3250 applications from 2021 pending for decision on 31.12.2022).
concluded a total of nine donation contracts in May 2022 with organizations and individuals that provided food products (Food Bank), mattresses, pillows, blankets, bedding and hygiene packages (UNHCR with a donation worth BGN 700,000), medicines and medical supplies (Bulgarian Red Cross), educational materials and school bags for the children who attend a Bulgarian school ("Caritas"), toys, coloring books, baby and children’s clothes (United Nations Children’s Fund, UNICEF). To limit the widespread infectious diseases among asylum seekers, such as scabies and pyoderma, as well as to provide means for personal hygiene and treatment, the SAR relied mainly on the support of international organizations and NGOs due to a lack of budget funds. The necessary medicines were mainly provided by the Bulgarian Red Cross and in particular by the regional office in Haskovo. The monthly disinfection, deratization and mite destruction activities in the SAR centers were carried out on the basis of a contract concluded in May for a period of 12 months or until the funds are exhausted. Due to the fundamental shortage of general practitioners in Bulgaria, the medical care of asylum seekers was mainly carried out in the medical offices set up in the SAR centers in Sofia and Harmanli, where a total of 29,071 outpatient examinations were performed in 2022.

The most significant problem in 2022 remained the safety and security of persons seeking protection housed in refugee centers. Safety and security continued to be unsecured, as persons involved in racketeering, prostitution and drug distribution continued to have near-unfettered access to the centers at night without interference from hired private security guards. In May, the SAR began monthly unannounced inspections of the security posts as well as targeted inspections when a signal was received about violation of public order in the vicinity of a given reception center. In the period from 1 April to 23 December, seven meetings were held with the management of the security companies regarding identified gaps in the implementation of security activities, including the lack of security guards at some of the designated posts. In the middle of the year, NGOs asked the SAR management to take specific measures to ensure the safety of the asylum seekers housed in its centers. Subsequent requests from the SAR to the Ministry of Interior to replace private security companies with regular police protection of refugee centers were rejected three times in 2022 by both the regular government’s interior minister and the caretaker government’s interior minister. Constant presence of a police team is ensured only for the largest refugee center in Harmanli, which, however, is located in front of its central entrance and is extremely inadequate to ensure the safety and security of the nearly 4,000 people accommodated there. The security in the rest of the reception centers, is still provided by private companies, which, in order to reduce costs, traditionally hire men of retirement age and older as security guards.

258 Ibid.
259 Ibid.
260 SAR. Letter to BHC with ref. No. RD05-72 of 26.02.2023
261 BHC. Letter to SAR with ref. No. Б-67 of 04.08.2022
262 SAR. Letter to BHC with ref. No. RD05-72 of 26.02.2023
Access to material assistance

Asylum seekers who choose to live outside the registration and reception centers at their own expense lose their right to social assistance. Asylum seekers who have no means of living are entitled to accommodation in the refugee centers, three meals a day, free basic medical care and psychological support, although no such support is provided in practice. The monthly financial assistance has not been provided since 2015. Access to the other rights to material assistance provided for in the EU community regulations is not guaranteed by law and such assistance was not provided, which raises the question of their compliance with the requirements of Art. 17, 18 and 25 of the revised Reception Directive.

Access to labor and employment

During the proceedings, asylum seekers gain access to the right to work three months after their registration with the SAR, if the proceedings have not yet ended with an effective decision. In 2022, the DAB issued 302 work permits to asylum seekers during the proceedings to support themselves while their asylum application was being processed. Of these, only 12 asylum seekers were employed, alongside 5 persons who were granted protection, of which, however, only 1 person who was granted protection and 10 asylum seekers found work through employment programmes, while the rest found work independently and on their own initiative. At the same time, a total of 2,214 persons granted temporary protection started work, of which 191 found work independently, 16 - under employment programmes and 2007 - under the EU Human Resources Development Programme.

Safe areas for unaccompanied children

The two safe zones for accommodation of unaccompanied children seeking protection continued to function also in 2022. Both zones are organized under the Registration and Reception Center in Sofia, namely in the dormitory in the "Voenna Rampa" quarter, which mainly accommodates children from Afghanistan and Pakistan, and the dormitory in the "Ovcha Kupel" quarter, which accommodates children from Arab countries. As the government continued to provide no additional budget to the SAR for this activity, the safe zones continued to be funded by the Asylum, Migration and Integration Fund under a project managed by the International Organization for Migration, which ends on 31.12.2023. The two zones should provide 24-hour monitoring, care and support tailored to specific and individual needs. However, to the extent that both safe zones are designated as part of the dormitory

263 ARA (promulgated in SG 54 of 31.05.2002), Article 29, par. 9
264 Ibid., Article 29, par. 1.
265 Directive 2013/33/EU (promulgated in OJ L 180/96 of 29.06.2013), Articles 17, 18 and 25.
266 ARA (promulgated in SG 54 of 31.05.2002), Article 29, par. 3.
267 SAR. Letter to BHC with ref. No. RD05-72 or 26.02.2023
268 Employment Agency. Letter to BHC with ref. No. RD08-13 of 06.01.2023
buildings in the quarters of "Voenna Rampa" and "Ovcha Kupel", the general security problems of the refugee centers, especially in their surroundings, indirectly affected the situation of the unaccompanied children. As in the past year, the number of unaccompanied children who sought protection in Bulgaria continued to grow\(^{270}\), and again the capacity of the two safe zones (a total of 288 places) proved to be extremely insufficient to shelter all arriving children. Therefore, the accommodation of unaccompanied children outside the safe zones in the mixed dormitories continued, together with other adults, and without appropriate care and guarantees for personal safety. At the end of 2022, the new management of the SAR and UNICEF reached an agreement to finance the opening of a third secure area for unaccompanied children at the Registration and Reception Center in Harmanli, which is expected to become operational after the completion of the necessary renovation and organizational activities at the end in 2023.

**Detention in asylum procedure**

National law allows detention pending an asylum procedure, albeit under limited conditions and for the shortest possible period.\(^{271}\) Since the introduction of the provision in the legislation\(^{272}\), a total of 116 asylum seekers have been detained in closed reception centers during the asylum procedure mainly on the grounds of a threat to national security, of which 39 asylum seekers in 2022.\(^{273}\) The average length of detention in closed reception centers of SAR however continued to decline, reaching an average of 56 days in 2022.\(^{274}\)

**Access to integration**

The only municipality that has concluded an integration agreements with newly recognized refugees in Bulgaria continues to be the Sofia Municipality, and more specifically, only two of its territorial municipal administrations – "Vitosha" district and "Oborishte" district. In 2022, only 6 families including approximately 20 members with minor children concluded 6 integration agreements. This represents a setback from 2021, when a total of 83 refugees received integration support from these two metropolitan district municipal administrations based on 17 concluded integration agreements. However, no other integration measures or activities were planned, funded or available to people granted international protection – refugee status or humanitarian status. The programme for the integration of persons under temporary protection prepared by the regular government was not adopted due to its fall from power after a vote of no confidence on 22 June 2022. Consequently, Bulgaria marked the ninth consecutive year of zero integration of refugees.

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\(^{270}\) 3172 unaccompanied children in 2021 and 3348 unaccompanied children who sought protection in 2022.

\(^{271}\) ARA (promulgated SG 54 of 31.05.2002), Article 45b, par.1.

\(^{272}\) ARA (amended and promulgated in SG 80 of 16.10.2015), Article 45a – 45f.

\(^{273}\) SAR. Letter to BHC wtih ref. No. RD05-40 of 16.01.2023

\(^{274}\) 2022: 56 days; 2021: 86 days; 2020: 91 days; 2019: 252 days; 2018: 192 days; 2017: 202 days.
Special measures for unaccompanied children who are granted protection

In 2022, another breakthrough was achieved regarding the care of unaccompanied children. The SAR began purposefully looking for the possibility of placing the unaccompanied children subject to a procedure in licensed children’s family-type accommodation centers, but especially the unaccompanied or separated children who have received international protection. During the procedure, such efforts were made mainly with regard to minor children seeking protection or children with special needs, or identified as being at increased risk of trafficking or other abuse. After recognition of the status, the efforts were focused on all unaccompanied children, except those in family reunification proceedings, who were allowed to await reunification with their parents or other family members at the SAR registration and reception centers. As a result of this positive change, a total of 26 unaccompanied children\textsuperscript{275} were accommodated in specialized childcare centers last year, of which 2 were asylum seekers and 24 were granted protection. A total of 10 licensed centers and services for children have joined this practice in settlements all over the country, for example Sofia, Ruse, Vidin, Burgas, Kardzhali, Novo Selo and Zvanichevo. At the same time, however, the lack of in-depth training and preparation of the staff in these centers to work with the specific group of unaccompanied children seeking or receiving protection should be noted.

Arbitrary termination of granted protection

A new provision,\textsuperscript{276} introduced into the law in 2020, provided an additional termination clause in violation of both the Geneva Convention Relating to the Status of Refugees\textsuperscript{277} and the Qualification Directive.\textsuperscript{278} The law allowed termination or withdrawal of status from a refugee who did not submit an application for the issuance of Bulgarian identity documents within 30 days of receiving the status or of their theft, loss or destruction. This is how the SAR’s practice of terminating protection on this basis, which began in 2017, was “legalized”. So far, the arbitrary termination of granted protection has affected a total of 4,364 people, respectively 770 people in 2018, 2,608 people in 2019, 886 people in 2020, 105 people in 2021 and 41 people in 2022.\textsuperscript{279}

\textsuperscript{275} SAR. Letter to BHC with ref. No. RD05-40 of 16.01.2023
\textsuperscript{276} ARA (promulgated SG 54 of 31.05.2002), Article 42, par. 5.
\textsuperscript{277} Convention on the Status of Refugees (Resolution 319(IV) of 03.12.1949 of the General Assembly of the United Nations), Article 1C.
\textsuperscript{279} SAR. Letter to BHC with ref. No. RD05-40 of 16.01.2023.
Relocation and resettlement

Since 2015, Bulgaria has accepted a total of 88 persons under the European relocation scheme, of which 76 persons are from Greece and 10 from Italy. Since the conclusion of the resettlement agreement between the EU and Turkey, a total of 85 Syrian refugees have been resettled in Bulgaria of the 110 persons for which an application was filed by the country.

Temporary protection for persons displaced by the war in Ukraine

According to national legislation, temporary protection is granted with the so-called general administrative act. According to the law, these acts are issued by a central authority with automatic legal effect, which create rights for an indefinite circle of persons determined by general circumstances or characteristics. According to the national asylum law, the government (Council of Ministers) grants temporary protection if the protection is activated by a decision of the Council of the EU, which also determines its duration. Therefore, the government’s act of granting temporary protection has group-oriented, collective and automatic nature, thus covering all persons from a designated country of origin who have entered and sought protection in Bulgaria, with immediate legal effect.

Provision of temporary protection

On 10 March 2022, the Bulgarian government adopted Decision No. 144, granting thereby temporary protection to displaced persons from Ukraine, which entered into force on the date of its publication on 14 March 2022. The decision is expressly retroactive to cover all persons displaced from Ukraine since 24 February 2022. Therefore, until 14 March 2022, all Ukrainian refugees who requested protection in Bulgaria were still registered by the SAR as asylum seekers in individual procedures for granting international protection (refugee or humanitarian status). From 15 March 2022 every Ukrainian refugee who entered the country and stated to the authorities that s/he was seeking protection had to be directly and immediately issued a document certifying her/his legal status as a person who was granted temporary protection in Bulgaria with validity for the period of its duration 4 March 2023. However, due to an error made in Decision No. 144, the documents of the persons with temporary protection in Bulgaria were issued with validity until 24 February 2023.

Access to international protection proceedings

The national law regulates the right of the users (beneficiaries) of temporary protection to submit an individual application for granting of international protection in the form of refugee status or humanitarian status. However, this individual proceeding cannot be opened and the application for the granting of international protection cannot be examined and issued a decision before the period of the granted temporary protection has finally expired.
In principle, the Bulgarian asylum system does not require the issuance of an additional permit by the immigration police that authorizes or certifies the right of the person granted protection to reside in this country. Thus, the act of granting international protection by SAR, the specialized administrative body for protection, is sufficient for the user of the relevant type of protection to receive a certification document, which is issued automatically. This regulation also covers the beneficiaries of temporary protection. The government’s decision to grant temporary protection to persons displaced by the war in Ukraine is sufficient for them to be automatically issued the relevant document of a foreigner granted temporary protection, if and when they apply to the relevant registration authorities.

Scope of temporary protection

After the start of the war in Ukraine, the regular government took measures which, for the period from 24 February to 22 June 2022, provided access to this country to a total of 361,439 displaced persons from Ukraine. Of these, 83,215 stayed in this country; 119,057 received state-provided shelter and food; 117,591 were registered under temporary protection (12,340 men, 59,498 women, 45,261 children and 492 unaccompanied children). However, the regular government failed to adopt either the prepared package of legislative amendments or a programme for the long-term integration of Ukrainian refugees, as it was ousted by a vote of no confidence on 22 June 2022, resulting in the dissolution of the Parliament on 1 July 2022. As a result of the restrictive policy undertaken by the caretaker government of the pro-Russian President Rumen Radev towards those with temporary protection and the cancellation or limitation of some basic forms of assistance, such as accommodation and meals, from the total of 149,268 Ukrainians registered under temporary protection to 31 December 2022, only 49,704 persons displaced by the war in Ukraine remained in Bulgaria.

Chapter 13. Right to health

In 2022, Bulgaria reported the largest drop in life expectancy of all EU countries as a result of the mismanagement of the COVID-19 epidemic and of the health system in general in recent years. The combination of an ongoing pandemic and an unprecedented wave of refugees brought to the surface the serious problems of access to health services in the country: financial and geographical limitations in access, entire groups of specialists decreasing in number and aging, lack of prophylaxis, prevention and early diagnosis against the background of over-hospitalization.
COVID-19 – post-pandemic effects

According to data from the tool\textsuperscript{280} for monitoring the vaccination process of the European Center for Disease Control at the end of 2022 only 30.1\% of the population were vaccinated against SARS-CoV-2 in Bulgaria with a basic cycle of vaccination, and with one maintenance dose – below 12\%. According to the statistics center of Oxford University\textsuperscript{281}, the only country in the European region with lower vaccination coverage is Bosnia and Herzegovina with 28\%.

In November, the media published\textsuperscript{282} a report of a working group appointed by order of Minister Asena Serbezova, whose task was to investigate the mortality rate from COVID-19 in Bulgaria. The report indicates that, based on aggregated data from the beginning of the pandemic to May 2022, our country has the highest excess mortality of all countries in the world that provide data, with an excess of about 69,000 deaths, or more than 1\% of the country’s population. In this regard, already in 2021, the BHC filed a claim against the Council of Ministers and against the former Minister of Health Kostadin Angelov in his personal capacity with allegations of discrimination (direct and indirect) due to the National Plan for Vaccination against COVID-19 in the Republic of Bulgaria (hereinafter the Vaccination Plan), adopted by decision of the Council of Ministers No. 896 of 07.12.2020, and more specifically for giving to the group of elderly people aged 65 and over and people with accompanying chronic diseases lower priority than to other groups regarding their access to vaccination with the first doses of the vaccines against COVID-19 delivered to the country. Some of the claims were based on the specific way of elaborating the priority groups in the Vaccination Plan, in which, out of a total of 5 groups, the elderly and people with accompanying diseases were placed in the 4th place. The role of the opening of the so-called green corridors in February 2021 was also noted.

In 2022, the case was heard, and the two defendants contested the claims and argued that there was no discrimination on the grounds of “age” and “disability”. On 7 November 2022 Sofia District Court decided that discrimination did not take place either in respect of the vaccination plan or the opening of the green corridors. According to the court the elderly and those with co-morbidities would not have been included in the vaccination plan at all if they did not have these characteristics, therefore it is favorable to them to be included in it at all. The court did not examine the question of whether if these individuals had been included more prominently in the plan, their mortality and morbidity would have been lower, as is the main contention of the claim. This decision has been appealed and as of the beginning of 2023 is pending before the higher instance.

In January 2022 the Open Society European Policy Institute submitted a collective complaint to the European Committee of Social Rights alleging a violation of the right to health


\textsuperscript{281} Our World in data – \url{https://ourworldindata.org/explorers/coronavirus-data-explorer}.

\textsuperscript{282} ,,Зазубени са 860 хил. години живот“: експертен доклад проучи смъртността от COVID-19 в България, Дневник, 25.11.2022, available at: \url{https://www.dnevnik.bg/4418191/}.
and discrimination under the European Social Charter, as the elderly and persons with accompanying illnesses were not treated as a priority in the course of the covid vaccination. The Institute also asked the Committee to indicate to Bulgaria preliminary emergency measures. In 2022 written opinions were exchanged on the case and the Bulgarian government denied in an extremely short and superficial statement that it had violated the European Social Charter. A judgment on the case is expected in 2023.

BHC also took over the legal protection of persons injured by incorrectly administered vaccines. At the end of 2021 two children, aged 13 and 17, were given a single-dose vaccine at the Ministry of Interior Hospital, although this preparation was not approved for administration to persons under the age of 18. The error was discovered when the medical person tried to issue a vaccination certificate to the children but the system refused to accept a record for this preparation in respect of children. Instead of the Janssen vaccine, the medical person entered incorrect information that a first dose of another preparation was administered. The parents of the children alerted Sofia Regional Health Inspectorate, the Ministry of Justice and the Ministry of Health and asked for the incorrectly recorded information about the first dose of another drug to be deleted but also to record the actual preparation, Janssen, and to issue green certificates, which were required at that time in order to visit some closed public spaces in Bulgaria, for traveling abroad, as well as for attending school without mandatory weekly testing. After the successive refusals, the parents filed a complaint with the ACSC against the Ministry of Health with the same demands. In October 2022, the ACSC upheld the appeal and ordered the Ministry of Health to make the relevant entries in the immunization register and issue certificates. The Ministry of Health appealed this decision with the claim that it cannot record in the register the actual preparation and issue a certificate, since a medical error cannot be entered in the register. In 2023, the case will be heard before the SAC.

Right to health for Ukrainians under temporary protection in Bulgaria

In 2022, after Russia invaded Ukraine and a full-scale war broke out, Bulgaria welcomed the largest wave of refugees in its history. The demographic profile of the refugees was associated with increased vulnerability and need for timely access to health care and social protection systems – the flow consisted mainly of women with children and elderly people with chronic illnesses.

In the first month, the access of Ukrainian citizens to health care was carried out entirely on a voluntary basis by individual doctors and medical facilities that had declared their readiness for this. At the end of March, through an instruction to the regional health inspectorates the Ministry of Health assigned the health care for pregnant women and children to the 31 health consultative centers opened in the country, without commitment to the rest of Ukrainian citizens.

283 Provided to BHC by the National Crisis Response Team by email dated 28.03.2022.
Changes to the Health Insurance Act were adopted in April in order to expand its scope to include persons under temporary protection. The voted changes made it possible for persons granted temporary protection and refugees to have the right to medical assistance under the conditions and according to the procedure determined for Bulgarian citizens, with the exception of the cases of medical assistance provided in accordance with the rules for the coordination of social security systems.

At the beginning of May, by a decree of the Council of Ministers, the state took over the health insurance of all those registered under temporary protection for a period of 3 months, and for children and pensioners – for the entire period of temporary protection. Almost a month after that, however, signals were coming in intensively both from the Ukrainian citizens themselves and from volunteers supporting them in their contacts with the Bulgarian institutions, that the information about their status as health insured persons was not successfully transferred from the SAR databases to the National Revenue Agency. This prevented many transferred from obtaining timely medical care.

After resolving the technical problems, it became clear that despite all the regulatory changes undertaken, the access of Ukrainians under temporary protection to medical care remained difficult. The main reason was the lack of sufficient general practitioners and pediatricians who had vacancies on their lists, who knew the language and who were willing to enroll Ukrainian citizens. Quantitative data on this issue, however, are not systematically provided by the NHIF.

In October 2022, the Pituitary Association obtained a court decision against the NHIF because the NHIF refused to provide data on how many Ukrainians under temporary protection were registered with a general practitioner in Bulgaria, as well as which doctors have vacancies on their patient lists. Despite the court’s instructions, with Decision No. RD-19-209/17.11.2022, the NHIF again refused to provide the requested statistics. According to empirical data of the Pituitary Association, there are only five general practitioners in Varna and the region who provide health care to people under temporary protection. There is no data about the country.

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284 Sharkova, M. Healthcare law: the most important regulatory changes in 2022, available at: https://mariasharkova.com/право-в-здравеопазването-по-важните-н/.
285 Council of Ministers. Decree No. 69 of 05.05.2022 on health insurance for persons with temporary protection under Art. 1a, par. 3 of the Asylum and Refugees Act and persons under Art. 39, par. 6, item 2 and Art. 40a, par. 3a of the Health Insurance Act, available at: https://www.mh.government.bg/media/filer_public/2022/05/10/postanovlenie69-05-05-2022.pdf.
286 Many questions. Why it is so difficult to provide medical care to Ukrainians, Free Europe, 30.05.2022 available at: https://www.svobodnaevropa.bg/a/31875102.html.
287 Administrative Court - Varna. Decision No. 1375 of 31.10.2022 under administrative case No. 1907/2022
288 NHIF. Decision No. RD-19-209/17.11.2022, provided to BHC by Pituitary Association.
289 An NGO from Varna obtained a court decision against the National Health Insurance Fund for refusing to say how many Ukrainians have a personal doctor, 31.10.2022, OFFNews, available at: https://offnews.bg/zdrave/varnenska-npo-osadi-zdravnata-kasa-za-otkaz-da-kazhe-kolko-ukrainrtci-i-788461.html.
National Map of Long-Term Health Care Needs – Mapping Violations in Access to Health Care

In the last days of the calendar year 2022, the Council of Ministers adopted a National Map of Long-Term Health Care Needs. Among other highlights, the document also provides data on violations and inequalities in access to medical care. In 9 cities and 3,882 villages, more than 800,000 people do not have local access to primary outpatient medical care. In the smallest regional centers (Dobrich, Vidin, Yambol) there is also insufficient capacity for hospital care. In terms of the types of hospital care, the map shows that at the national level, there is a surplus of over 13,400 hospital beds in the country. At the same time, however, there a lack of nearly 3,000 beds for further treatment and more than 500 for psychiatric treatment. Paradoxically, in terms of access to hospital care for children, Sofia City is the only region in the country that lacks enough pediatric hospital beds, even though it is a center for providing highly specialized hospital services for children from all over the country. This leads to a violation of access to health care both for children from the region and for children with serious or rare diseases from all over the country.

Chapter 14. Women’s rights

2022 also affirms the trend of strong mobilization of women’s movements as a response to conservative policies and attempts to restrict women. Violence against women has increased for another year, victims of domestic violence are increasing, the problem is recognized as the most serious for the women in our country, but the responsible institutions symptomatically fail to take adequate actions and the necessary legal changes to stop this black statistic. On the contrary, political formations use the problem for populist pre-election purposes.

Mobilization of women’s movements

In recent years – more perceptibly in 2022 – there has been a strong trend of mobilizing women’s organizations and movements both globally and locally. It is a natural reaction to the frequent conservative actions of various political formations influencing socio-political life. A number of EU countries have introduced laws banning the wearing of clothing that covers or hides the face in public, imposed by the far-right as a means of oppressing and discriminating against migrants. At the end of 2022, the feminist revolution unfolded in Iran.


with a powerful global resonance. Debates surrounding the ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the so-called Istanbul Convention) continue in a number of societies. Feminist activism currently predominates, focusing on the issue of domestic violence and gender-based violence. Bulgaria is among the radical examples – the Istanbul Convention was rejected and subsequently even declared unconstitutional in 2018. This was reaffirmed in 2023. Attempts are being made in a number of countries to ban and limit abortions, but also parallel policies to stimulate the birth rate, which fix the woman in her role as a mother, taking care of the family and the home.

Domestic violence/gender-based violence

If we had to describe the state-level approach to addressing gender-based violence in Bulgaria in one word, it might be “cyclicality”. There is movement, and it is upwards, only in the number of victims: in the past year 2022 at least 26 women were killed – usually by former or current partners (for comparison, the murders of women in 2021 were 22, and in 2020 – 19). In the first two months of 2023 alone, there are 8 more identical fatal cases. The data are from BHC monitoring on the website Spasena.org, dedicated to the problem of domestic violence. But the number is not taken from an existing official register – we count cases based on media publications. Because there is still no official statistics of victims of domestic and gender-based violence, kept by a state institution. And in 2022 the key mechanisms for controlling the problem are missing: in addition to statistics, there is no coordinating state body, no trained personnel, no sufficient crisis centers and no criminalization of domestic violence. The five essential elements without which the battle is lost are missing.

Protection against domestic violence - criticized and blocked in parliament

On 25 October 2022, the 40th anniversary of Bulgaria’s ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the 40th anniversary of the Committee on the Convention (CEDAW) was marked. Ironically, just three months later, on January 27, 2023, the 48th National Assembly rejected the important and long-awaited Bill amending the Law on Protection against Domestic Violence (LPDV). Deputies argued that they opposed it "in defense of children" and declared their opposition to the protection of domestic violence victims living in same-sex relationships. Among the arguments against the bill were false claims that it was unconstitutional and that it, along with the Istanbul Convention, introduced a "third gender" and "put children at risk". The Constitution of Bulgaria proclaims equality before the law for all individuals, and according to EU law and the domestic law of Bulgaria, discrimination based on sexual orientation or gender (gender identity) is a violation of the law.

Women and children in Bulgaria are disproportionately affected by domestic violence and gender-based violence. LGBTI individuals are also affected. Representatives of civil organizations reacted strongly and stated, "The hatred openly preached by the mentioned members of parliament towards LGBTI individuals is not just intolerable, it is illegal. It has no place in Bulgarian parliamentary life and is a disgrace to Bulgarian parliamentarism".\(^{293}\)

The chronology indicates that the bill was adopted in parliamentary committees with the participation of representatives from all political parties. The working group for the development of the Law on Protection against Domestic Violence (LPDV) was formed by Members of Parliament three years ago, in 2019. The most intensive work on drafting the changes to the LPDV took place at the end of 2021 and the early months of 2022 when Minister of Justice Nadezhda Yordanova prioritized the issue of domestic violence and improving measures to protect victims. During the 47th National Assembly, the government introduced the LPDV. However, the parliament was dissolved, and the bill remained unexamined. On 24 November 2022 (on the eve of 25 November - the International Day for the Elimination of Violence against Women), a group of deputies submitted the same LPDV to the 48th National Assembly.

Against the backdrop of a noticeable increase in femicides, once again, the issue was overshadowed by false narratives propagated by politicians for populist electoral purposes. Thus, the parliament once again rejected changes to the Law on Protection against Domestic Violence (LPDV)\(^{294}\), leaving them for the next National Assembly. Furthermore, Bulgaria once again declared its "categorical position against the Istanbul Convention," this time before the Council of General Affairs in Brussels on 22 February 2023.\(^{295}\) Political parties represented in parliament are engaging in disinformation campaigns and slander against the Istanbul Convention, while Bulgaria is called upon to ratify it. These are two conclusions drawn by the European Parliament regarding the Istanbul Convention.

The legislative changes were supposed to criminalize domestic violence, introduce prevention measures, provide real protection for those at risk, and establish a comprehensive coordinated policy on the issue. However, there is a lack of a specific body to coordinate these efforts. According to European standards, there should be one crisis center for every 10,000 inhabitants, where victims can seek shelter. This means that the country should have around 700 such centres. However, currently, there are only 13 centres in the entire country.

\(^{294}\) https://bnr.bg/post/101771021.
\(^{295}\) https://www.svobodnaevropa.bg/a/32282766.html.
Every third young woman is assaulted by her partner

Every third woman aged 18-29 has experienced violence from a current or former partner (36.3%). The most common form of violence perpetrated by an intimate partner is psychological violence, affecting 19.4% of victims. These are two key findings from a study conducted by the National Statistical Institute (NSI), published at the end of 2022. The data reveals the following for women aged 18-74:

- 11.9% have experienced at least one incident of physical or sexual violence at some point in their adult lives, regardless of the perpetrator or the relationship between them.
- 20.5% have experienced one or more instances of violence from an intimate partner, including psychological, sexual, and physical violence (including threats).
- Every third woman aged 18-29 has been assaulted by a current or former partner (36.3%). Young women (between the ages of 18 and 29) are at the highest risk of violence from an intimate partner.
- Almost one in ten women (9.5%) has experienced physical (including threats) or sexual violence from someone in their household.
- 12.2% of women have experienced sexual harassment in the workplace by a male colleague with whom they have professional relationships.
- 28% have experienced physical or emotional violence during their childhood from one of their parents.
- Two out of three women believe that violence against women by their intimate partners in Bulgaria occurs very or quite frequently.
- According to the study results, the most common form of violence perpetrated by an intimate partner is psychological violence, affecting 19.4% of victims.

There were 2525 orders for immediate protection sent to the district offices of the Ministry of Interior (MVR) for execution in 2022. The data received and stored by the Main Directorate "National Police" is extracted from the tables containing information about the issued protection orders. These tables are filled in monthly by regional coordinators in the regional directorates of MoI, based on copies of the court decisions received during the current month, regarding the perpetrator’s current address and the address of the victim. This information was provided by the Ministry of Interior in response to an inquiry from the BHRC on the Law on Protection against Domestic Violence.

The permanent protection orders for 2022 were approximately half - 1129. They were issued in accordance with Article 16, paragraph 1 of the Law on Protection against Domestic Violence (ЗЗДН), and measures were imposed under Article 5, paragraph 1, points 1, 2, and 3.

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297 Data from the Ministry of the Interior for 2022 in response to an inquiry by the BHC on the FDFA.
The orders were sent to the district offices of the Ministry of Interior (MVR) for execution in 2022.

At the same time, the Main Directorate "National Police" does not have information about the number of notifications made to the prosecuting authorities. In case of non-compliance with the court order, the police authority that has established the violation detains the perpetrator and immediately notifies the prosecuting authorities under Article 21, paragraph 3 of the Law on Protection against Domestic Violence (ЗЗДН) in 2022.²⁹⁸

At the end of 2021, the Ministry of Interior (MVR) issued a public statement calling for greater engagement in the fight against domestic violence. In an official letter, the then Minister of Interior, Boyko Rashkov, supported the declaration of 29 November as a Remembrance Day for women and children killed as victims of domestic violence, sending a clear message from the state that domestic violence is a form of criminal activity.

A year ago, the MoI assured that they were developing an automated information system called "Domestic Violence and Gender-Based Violence" for reporting incidents and monitoring cases of domestic violence and gender-based violence. The NGO sector, as well as international organizations, have long advocated for such official data collection on cases of domestic violence. However, a year later, the request has still not been fulfilled. Additionally, no algorithm for assessing the risk to the lives and health of victims of violence has been announced, which should be implemented by first-line institutions such as the MoI, the Ministry of Labor and Social Policy (MLSP), and the Ministry of Health (MH). The MoI previously assured that work was being done on this matter in response to an information request from the Access to Information Program (AIP) under the Law on Access to Public Information.²⁹⁹

It is evident from a response to an inquiry from the Access to Information Program (AIP) regarding statistical information related to domestic violence cases in 2022 that the Prosecutor’s Office does not collect statistical data on concluded pre-trial proceedings and cases returned from court.

Half of the resolved pre-trial proceedings in cases of non-compliance with protection orders have reached the court. Out of a total of 191 cases, 98 prosecutor’s acts were filed in court in the first half of 2022. This practically means that the decisions regarding the remaining half indicate a finding that no crime has been committed. According to the law, anyone who obstructs or in any way frustrates the execution of a court decision or fails to comply with a protection order against domestic violence or a European protection order is punishable by

²⁹⁸ The information has been provided by the Prosecutor’s Office of the Republic of Bulgaria under APIA at the request of the BHC for the first six months of 2022.
²⁹⁹ APIA at the request of the BHC for data related to the prevention of domestic violence from 2021.
imprisonment for up to three years or a fine of up to BGN 5,000 (Article 296, Paragraph 1, Proposal 2 of the Criminal Code).

Table 000. Statistical data on pre-trial proceedings (PTP) initiated for crimes committed in the context of domestic violence.

<table>
<thead>
<tr>
<th>Texts of NK</th>
<th>Newly formed DPs</th>
<th>Solved DP</th>
<th>Prosecutorial documents submitted to the court</th>
<th>Persons under the acts submitted to the court</th>
<th>Convicted and sanctioned persons with an effective court act</th>
<th>Acquitted persons with an effective court act</th>
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</tr>
</tbody>
</table>

Attitudes of women towards "women's rights"
The perceptions of women themselves regarding their issues in Bulgarian society are crucial for informing the state about existing and future policies towards women. They serve as a path towards women's equality and the resolution of their problems. According to a survey conducted by the Bulgarian Women's Fund in 2022, 53% of respondents have a rather negative attitude towards the concepts of "women's rights" and "feminism," while 15% hold a strongly negative view. On the contrary, only 6.7% hold a positive opinion, and 25% have no particular attitude towards these concepts.

The surveyed respondents predominantly identify issues related to domestic violence and gender-based violence as significant problems for women in Bulgaria: domestic violence - 14.7%; lack of policies for gender equality and violence prevention - 8.6%; violence against women - 22%. Other highlighted problems include: poverty and economic dependence - 9.2%; demeaning treatment in the workplace - 14.1%; lack of women’s representation in leadership positions - 7.4%; gender-based stereotypes - 22.7%; double burden of work and household chores - 9.8%.

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Lack of places in nurseries and kindergartens - increased gender inequality

A typical problem in the Bulgarian reality, which has remained unresolved for years and deepens gender inequality, is the lack of available spots in municipal nurseries and kindergartens in the capital city. Last year, the organization "LevFem" published a study on this issue. They publish a study on the impact of the shortage of places in municipal crèches and kindergartens in the city of Sofia on the lives of women, 2021-2022, available at: https://levfem.org/izsledvane-detski-gradini/.

Thousands of children fail to secure placements annually, placing their parents in extremely difficult situations. This problem exacerbates socio-economic inequalities that intertwine with gender disparities. Households that cannot afford private services compensate by relying on low-paid and/or unpaid caregiving labor performed by women, who are thus marginalized and overloaded. Women are particularly affected by this problem.

Women are particularly affected by this problem:

- Women are primarily responsible for childcare, and they are the ones who extend their maternity leave for an additional year when their children are not admitted to nurseries or kindergartens. During this period, their income is reduced to 380 BGN and/or 650 BGN.
- Mothers also use their accumulated paid annual leave, but a significant portion of them are forced to take unpaid leave after their maternity leave expires. Therefore, if the child is not admitted by the age of two, they are completely deprived of income.
- A significant number of women switch to part-time employment and flexible working hours (16% of women with one child and 31.3% with two children under the age of six). As a result, they receive lower wages compared to those who can fully participate in the labor market, and their social security contributions decrease, which negatively affects the average monthly pension amount based on their contributions and age, despite the fact that many mothers have higher education.
- 12% have left their jobs.

Thus, women's lives are predominantly reduced to the social role of motherhood, and they are forced to engage in low-paid or unpaid caregiving work, significantly reducing their income due to the inability to work. This puts them in a position of dependence on their family and/or partner/spouse if they can rely on such support.

European law on equality between men and women

In March 2022, the European Commission adopted a proposal for a directive on combating violence against women and domestic violence. It was voted upon in an attempt to address

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the reported increase in reports and cases of violence against women based on gender, as a consequence of the series of lockdowns due to the COVID-19 pandemic. This increase confirmed the findings of scientific research that the risk of domestic violence increases during a crisis. The Commission also took into account the expected accession of the EU to the Istanbul Convention.

Violence against women and domestic violence are widespread throughout the EU and are estimated to affect every third woman in the EU. Regarding more specific forms of violence, in 2014, every tenth woman reported experiencing sexual violence, and one in twenty women reported being raped. Over 20% of women have experienced domestic violence. Cyber violence is also prevalent, with estimates from 2020 suggesting that every second young woman has been subjected to cyber violence based on gender. Overall, women more frequently encounter this type of violence based on their gender or social sex, particularly in its sexual forms. They systematically become targets in the online space of violent far-right extremist groups and terrorist groups that aim to spread hatred against them. The so-called incel movement (self-identified "involuntary celibate" men), for example, incites online violence against women and popularizes this violence as acts of heroism. Cyber violence primarily affects women who are active in public life, such as political activists, journalists, and human rights defenders. This can lead to silencing women and hindering their participation in society.

Violence in the workplace

Women are also subjected to violence in the workplace, with approximately one-third of women in the EU who have experienced sexual harassment having experienced it in the workplace. The EU Gender Equality Strategy for the period 2020-2025 announced measures to prevent these forms of violence, protect victims, prosecute offenders, and implement comprehensive and coordinated policies. The Action Plan of the European Pillar of

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303 European Union Agency for Fundamental Rights (FRA). Violence against women: a pan-European survey. Key Results Report 2014 FRA’s survey on violence against women is based on face-to-face interviews with 42,000 women across the EU. It represents the world’s most comprehensive study of violence experienced by women.


305 European Union Agency for Fundamental Rights (FRA). Violence against women: a pan-European survey. Key Results Report 2014 FRA’s survey on violence against women is based on face-to-face interviews with 42,000 women across the EU. It represents the world’s most comprehensive study of violence experienced by women.

Social Rights highlights the commitment to combating violence on a gender and sex basis and proposes legislation for this purpose.\textsuperscript{307}

An important reference point for the proposal is the Istanbul Convention\textsuperscript{308}, which is the most comprehensive international framework addressing violence against women and domestic violence. The Convention, which Bulgaria rejected and declared unconstitutional, serves as a significant foundation.

In particular, the following measures are proposed:

- Criminalization of certain forms of violence that predominantly affect women, have not been sufficiently addressed at the national level, and fall within the competence of the EU based on existing legal foundations. This includes the criminalization of rape based on lack of consent (in some member states, force or threat is required for this purpose), female genital mutilation, and certain forms of cyber violence.

- Strengthening victims' access to justice and their rights to appropriate protection, addressing the specific needs of victims of violence against women and domestic violence. These measures include:
  
  ✓ Ensuring that national authorities have the necessary resources to address violence against women and domestic violence.
  ✓ Ensuring that national authorities treat victims in a manner that respects their gender and sex-based characteristics.
  ✓ Providing individual assessment of protection and support needs tailored to the specific needs of victims of violence against women or domestic violence.
  ✓ Providing special guarantees for child victims of violence against women or domestic violence.
  ✓ Ensuring protection through immediate restraining orders and protection orders.
  ✓ Ensuring that victims can effectively claim compensation from the perpetrators of the crime.
  ✓ Ensuring the removal of online content related to cyber violence crimes and providing judicial protection for affected users.
  ✓ Ensuring the existence of government bodies that support, advise, and represent victims in judicial proceedings related to violence against women or domestic violence.


- Providing support for victims tailored to the specific needs of victims of violence against women or domestic violence. This includes specific support in cases of sexual violence and female genital mutilation, access to national helplines, increased availability of shelters, and comprehensive support for victims of workplace sexual harassment. Targeted support is also envisaged for victims with specific needs and at-risk groups, including women fleeing armed conflicts.

- Preventing violence against women and domestic violence, including by raising awareness, training specialists likely to come into contact with victims, and working with perpetrators of the crimes.

- Strengthening coordination and cooperation at the national and EU levels by improving data collection on violence against women and domestic violence. Ensuring consistency with existing provisions in this policy area.

Gender equality: still a plan on paper with 73 points

On 5 March 2020, the Commission adopted its Strategy for Equality between Women and Men for the period 2020-2025. This strategy sets an ambitious framework for the next five years on how to progress towards gender equality in Europe and beyond.

As one of the first concrete results of the strategy, in March 2021, the European Commission proposed mandatory measures for pay transparency.309 It presented a directive proposal to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. In March 2021, the Commission also adopted an Action Plan for the implementation of the European Pillar of Social Rights, where gender equality holds a central place and ambitious goals are set for women’s participation in the labor market, access to education and early childhood care, among other objectives.

Adequate minimum wages can also help reduce the gender pay gap since more women than men receive minimum wage. To this end, the European Commission presented a directive proposal in October 2020.310

At the same time, in the "new old" Bulgarian National Plan for Gender Equality (2023-2024)311 there are proposals outlined in a 30-page table and structured into 73 points.

309 Ibid.
However, specific actions and policies are lacking. In other words, the plan is currently only on paper. The measures are structured into five priority areas: gender equality and equal economic independence in the labor market, reducing gender pay and income gaps, participation in decision-making, combating violence and protecting and supporting victims, as well as overcoming gender stereotypes in various areas of public life. The document includes measures for better work-life balance for parents with young children and providing employment opportunities for the unemployed through childcare arrangements.

Chapter 15. Rights of Persons with Psychosocial and/or Intellectual Disabilities

In October 2022, the CPT (Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) published its report on its visit in 2021. The report contains alarming observations regarding institutions for active treatment as well as social homes for persons with mental disorders in Bulgaria. These observations include physical abuse of residents, the use of coercive measures, inadequate therapeutic environment, and the imitation of deinstitutionalization in social homes. Throughout the year, no reform of the social care system for persons with mental disorders was implemented. Institutional care remains the only option for many families. There are no candidates for personal assistants. The system as a whole is underfunded. The prohibition system was not reformed either, leaving thousands of people with violated fundamental human rights as a result of the functioning of the current system.

Violence, coercive measures, and inadequate therapeutic environment in psychiatric hospitals.

"Urgent actions are needed in all areas - legislation, infrastructure, human resources and training, as well as treatment methods in line with contemporary European practices."312 This is the assessment of the CPT regarding the state of mental health and social services in Bulgaria. Following its last visit in 2021, in the report published in October 2022, it urged the Bulgarian government to "combat stigma," put an end to the paternalistic approach towards patients with mental illness, and make genuine efforts to integrate people with psychosocial and intellectual disabilities into the community. "The long-standing mistreatment and neglect of such vulnerable service users in Bulgaria cannot continue and must be stopped immediately"313, the CPT stated categorically.

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312 CPT. Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022)20, Strasbourg, 18 October 2022, § 162 (hereinafter Report 2022).
313 Ibid.
For over 25 years, the CPT has expressed deep concern about the treatment, conditions, and legal safeguards for patients with mental disorders and for people with disabilities in social institutions. The Committee believes that actions are long overdue and that the overall approach to mental health care in Bulgaria needs to undergo fundamental changes. On 31 May and 1 June 2022, the CPT held discussions with the Bulgarian government regarding the systemic non-compliance with its 25-year-old recommendations and its public statement from November 2021.

Once again, the CPT has documented violence by staff, highly inadequate material conditions, staff shortages, inadequate treatment, and attitudes within psychiatric hospitals. In the Psychiatric Department for Forensic Psychiatry (DPB) in Karlovo, the CPT receives complaints that staff members shout at patients, orderlies push, slap, or beat them, and some employees consume alcohol while on duty. In the DPBs in Lovech and Kardzhali, witnesses attest that staff members shout, push, or hit patients less frequently. The CPT notes that despite significant internal renovations, the furnishings are insufficient, patients do not have lockable cabinets for personal belongings, nor do they have opportunities for privacy and personal space. None of the hospitals offer a suitable protected outdoor area for walks.

The number of psychiatrists has increased compared to previous CPT visits, but a large part of the medical staff is approaching retirement age or has already surpassed it. The staffing in the departments is insufficient to provide the necessary individual care and to form multidisciplinary clinical teams consisting of psychologists, social workers, and occupational therapists. As a result, most patients simply lie in their beds or wander aimlessly through the corridors.

Many patients have not been fully informed about their diagnosis and treatment. The use of physical restraints still does not comply with international standards and often goes undocumented. In the DPB in Kardzhali, the CPT discovers patients (including those on voluntary treatment) who have been left alone in 4- or 5-point restraints, attached to their beds, in isolation rooms for more than 48 hours, wearing diapers that are changed every six hours. Some patients have also reported that their hands were restrained above their heads, leading to pain, swelling, and loss of sensation. The CPT also finds that a number of patients who have signed consent forms for treatment and are considered voluntary have expressed their disagreement with their admission and treatment and have stated their desire to leave, but they are not allowed to do so and are effectively detained. The CPT also highlights the significant number of patients who do not require inpatient treatment (so-called social cases) but remain in inappropriate institutional settings for an indefinite period due to the ongoing lack of effective mental health services and community support.

Transinstitutionalization in welfare homes

Once again, the CRPD (Committee on the Rights of Persons with Disabilities) has observed instances of violence against residents. In the home for men with mental disorders in the
village of Petkovo, residents have complained about being verbally abused, shouted at, and physically assaulted by the attendants. In the home for individuals with intellectual disabilities in the town of Banya, residents have reported that one of the guards shouts at them, consumes alcohol during his shift, carries a wooden stick to threaten and occasionally hit them.

The Committee acknowledges that following two immediate observations during its visit in 2021, the Bulgarian authorities took measures for urgent repairs in the Banya home, where "the living conditions were torturous" in one of the blocks. Despite the illegality of isolation and physical restraint in social institutions, and despite repeated recommendations for their discontinuation, these measures are still being applied in two out of the three visited homes (Petkovo and Byala).

During its visit to the home for women with mental disorders in Gara Lakatnik (scheduled for closure) in late 2021, the Committee found that the home was undergoing significant reform. It was being financed by an EU project aimed at replacing the current institution with three 'family-type' residential buildings, each with a capacity of 15 beds. It was reported that construction began in April 2020 and was supposed to be completed by March 2022. The Committee commented that in its view, "the construction of (or even conversion of existing) buildings into such 'family-type' accommodation within the premises of remote institutions, to be inhabited by the same users, cared for by the same staff, is at best transinstitutionalization, rather than a meaningful attempt at true deinstitutionalization." Transinstitutionalizing users from social care homes into "family-type" centres located within existing institutions or other remote locations does not represent genuine deinstitutionalization, nor does it allow for appropriate reintegration of users into the community.

The CPT reaffirms its opinion that many of the serious systemic issues in Bulgarian social homes will only be addressed if an adequate number of appropriately trained clinical care staff (nurses, caregivers, and multidisciplinary clinical personnel) are provided prior to further deinstitutionalization. The CPT once again calls on the Bulgarian authorities to increase staffing levels and further improve the recruitment of personnel (including conditions and salaries), their training, and supervision, in order to ensure an sufficient number of clinical staff with appropriate qualifications at all levels and disciplines in institutions and residential centres.

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314 No other organization independently monitors these institutions, and there is no official evidence of the transinstitutionalization. But judging by their addresses in the database uploaded to the ASA page, this is actually the case for a large proportion of FACCs for disabled adults. They are located in the same building(s), in the yard or in the same village where the major institutions are located.
315 Report 2022, § 141.
316 Ibid.
How far has the reform progressed?

The deinstitutionalization of adults with disabilities in Bulgaria is carried out in violation of Art. 19 of the CRPD, General Comment No. 5 (2017) on independent living and community inclusion and the 2022 Guidelines on Deinstitutionalization.

In 2020, the SSA came into effect. In 2021-2022, the by-laws for the SSA were developed and adopted. The Social Services Planning Ordinance was adopted on 6 April 2021.317 The Ordinance on the Quality of Social Services was adopted by the Council of Ministers on 22 June 2022.318 It regulates in a new way all issues related to the provision of quality social services, including the different types of social services for people with disabilities. The Ordinance on the standards for remuneration of employees providing social services funded from the state budget was adopted in December 2020 and entered into force on 1 January 2022.319 The decision of the Council of Ministers on the standards for activities delegated by the state was adopted on 3 February 2022 and entered into force on 1 April 2022. It foresees an increase in funding standards for all state-delegated social services in 2022.

What does the practice review show? According to data from the Social Assistance Agency (SAA)320 as of October 2022, nearly 5,000 people still live in 75 institutions for people with various disabilities (psycho-social, intellectual, sensory, physical disabilities and dementia). A total of 3,317 people with various types of disabilities live in 312 residential services (FACC, sheltered housing, transitional housing and supervised housing). About 20,000 people with disabilities from 265 municipalities receive assistant support.321 And around 50,000 people are personal assistance users under the Personal Assistance Act.

317 Ordinance on the planning of social services (entered into force on April 9, 2021), available at: https://www.lex.bg/bg/mobile/lidoc/2137211406. The ordinance regulates: the criteria for determining the services and the maximum number of users in the National Roadmap of Social Services; the criteria, procedure and conditions for development by the municipalities of an analysis of the needs and proposals of the municipalities as a result of the analysis at the municipal level; the procedure for developing and updating the National Roadmap of Social Services; the procedure for implementation, cooperation and coordination at the national, regional and municipal level in the development of the National Roadmap of Social Services and the procedure for coordinating the municipal annual plans for social services.


319 Ordinance on the standard for remuneration for employees providing social services funded from the state budget (entered into force on 1 January 2022), available at: https://lex.bg/bg/laws/lidoc/2137207820.

320 SSA. Register of social services funded from the state budget. The Register, which only contains data on the capacity of institutions and services, and not on persons actually residing in them, is available at: https://asp.government.bg/bg/deynosti/sotsialni-uslugi/sotsialni-uslugi-za-palnoletni-litsa/registar-na-vidovete-sotsialni-uslugi-finansirani-ot-darzhavniya-byudzhet/.

321 Assistant support according to the rules of the SSA is provided for persons over the working age, unable to care for themselves, who do not have a degree of reduced working capacity determined according to the relevant procedure, and for children with permanent disabilities and adults with permanent disabilities with assigned personal assistance support who do not use assistant support, funding to provide assistant support or for whom no home care assistance is received under another law. Assistant support is a specialized social service that includes support from an assistant for self-care, movement and travel, changing and maintaining body position, performing daily and household activities, and communication.
The Action Plan for the period 2018-2021 for the implementation of the National Strategy for Long-Term Care\textsuperscript{322} (which is being implemented with delays) invests Euro funds in the FACCs and expects to achieve the following results:

- establishment of 100 social services for 2,140 users (already agreed with the 2018-2021 Plan);
- provision of quality care and support in new services in the community to a minimum of 750 deinstitutionalized persons with psycho-social and intellectual disabilities;
- provision of day, hourly and residential care and support for over 2,000 disabled and care-dependent elderly people;
- provision of social services in a home environment to over 17,000 persons with disabilities and elderly people dependent on care;
- provision of patronage care to over 17,000 persons with disabilities and elderly people dependent on care;
- closing of 10 specialized institutions for persons with psycho-social and intellectual disabilities;
- development of new legislation regulating social and healthcare-social services;
- increasing the capacity of employees in the long-term care system.

The analysis of the situation in Bulgaria in the Action Plan for long-term care 2022-2027 shows that about 9,000 people with disabilities and elderly people live in 159 specialized institutions, and there are 1,796 people awaiting placement in them as first choice, of which 923 are persons with psycho-social and intellectual disabilities and dementia.

About 1,580 persons, almost all of whom have psycho-social and intellectual disabilities and dementia, are waiting to be accommodated in 271 FACCs and sheltered housing facilities.

Persons with mental disorders residing permanently (over one year) in the SPH are 207 as of 30 June 2021. They do not need active treatment, but cannot be discharged due to lack of housing, lack of relatives and friends or because of the unwillingness of the latter to care for them after their discharge from the hospital. They are mainly people with schizophrenia - 82%, 7% have intellectual disabilities, and 3% - bipolar disorder and dementia.\textsuperscript{323}

The demand for institutional care continues to be driven primarily by increased demand for long-term care services as a result of: the consistent population aging; the insufficient

\textsuperscript{322} The Council of Ministers. Action plan for the period 2018 - 2021 for the implementation of the National Strategy for Long-Term Care, available at: https://strategy.bg/StrategicDocuments/View.aspx?id=882.

\textsuperscript{323} The Council of Ministers. Action plan for the period 2022-2027 for the implementation of the National Strategy for Long-Term Care, adopted by Decision No. 509 of the Council of Ministers of July 21, 2022, p. 11, available at: https://strategy.bg/StrategicDocuments/View.aspx?id=882.
provision of services in the community and at home; existing stereotypes and attitudes that sometimes lead to discrimination of people with psycho-social and intellectual disabilities; and in some cases - to the unreformed guardianship system, which gives too many rights to others, especially the guardians of persons placed under total guardianship, but does not offer adequate measures to support people with disabilities.\textsuperscript{324}

According to SAA data, under procedure BG16RFOP001-5.002 “Support for the deinstitutionalization of social services for the elderly and disabled” of the Operational Programme "Regions in growth" 2014 - 2020, infrastructure for new services is being built - 6 day care centres for people with dementia and their families and 68 FACCs for people with psycho-social disabilities, people with intellectual disabilities, people with dementia and elderly people unable to care for themselves.

The process of removing people placed in institutions and SPH, which started in October 2021, is still ongoing. Three institutions for persons with psycho-social and intellectual disabilities have been closed as of July 2022. Users have been relocated to newly established FACCs in other villages and small towns.

Within the Operational Program “Development of Human Resources” 2014 - 2020\textsuperscript{325}, the construction of 10 centres for social rehabilitation and integration for 380 persons with psycho-social and intellectual disabilities is planned. They are to provide supportive non-residential social services in the community to create/restore independent living skills and fully integrate users into the community. Two centres for social rehabilitation and integration for persons with psycho-social and intellectual disabilities with a total capacity of 40 places have been established, which operate as of July 2022 with funding from the programme.\textsuperscript{326}

Under the Operational Programme "Development of Human Resources" 2014-2020\textsuperscript{327}, the construction of 16 centres for overall care for persons with severe multiple disabilities and their families in 16 municipalities is underway. The indicative number of users is 995\textsuperscript{328}. Two day care centres for the support of disabled people and their families with a total capacity of 70 users have already been built and are functioning. The goal is to create 11 day care centres. In 2020 and 2021, 8 funding agreements were concluded with municipalities.\textsuperscript{329}

The analysis in the Long-Term Care Action Plan 2022-2027 shows that residential care waiting lists are long, as clearly the care and services provided in the community and at home to people with disabilities are still quite insufficient. The SSA, which came into force in July 2020, was designed to address this issue. However, it is not yet fully implemented as it implies

\textsuperscript{324} Ibid., p. 12.
\textsuperscript{325} Under operation „Social Inclusion of Persons with Mental Disorders and Intellectual Disabilities”.
\textsuperscript{326} MLSP. Report on the implementation of the Action Plan for the period 2018-2021 for the implementation of the National Long-Term Care Strategy, p. 20.
\textsuperscript{327} Under operation BG05M9OP001-2.008 “Support for Persons with Disabilities”.
\textsuperscript{328} Council of Ministers. Action Plan for the period 2021-2022 for the implementation of the National Strategy for People with Disabilities (2021-2030), p. 45.
\textsuperscript{329} MLSP. Report on the implementation of the Action Plan for the period 2018-2021 for the implementation of the National Long-Term Care Strategy, p. 19.
the development of a National Roadmap of Social Services based on an actual assessment of the needs of people with disabilities, which had to be adopted by the Council of Ministers within 12 months of the publication of the census data of the population and housing stock in the Republic of Bulgaria, conducted in 2021. As of December 2022, the census data has not yet been published. Feedback from users of existing services and their families, to be sought from providers, was only introduced in June 2022.

What comes next?

The Long-Term Care Action Plan 2022-2027, worth over BGN 1.5 billion, adopted in July 2022, provides for mass construction and renovation of buildings. Some of the main activities include:

- development of services in a home environment - assistant support, mobile integrated health and social services and remote services (telecare/teleassistance);
- closure of 41 institutions for persons with disabilities by developing: 125 social and 27 residential health and social services for persons with disabilities in a newly built infrastructure for 4,560 users and 125 centres for information and counseling, advocacy and mediation, community work, therapy and rehabilitation, training for the acquisition of skills, support for the acquisition of work skills and day care for 3,750 users, which can also be used by the persons accommodated in the newly built residential services;
- construction of 54 new residential health and social services for elderly persons unable to care for themselves, in need of constant medical care, and for adults with permanent disabilities, in need of constant medical care, for 810 users;
- construction of 10 new centres for temporary accommodation/shelters and 12 new centres for crisis accommodation for about 190 users;
- reforming all 82 homes for the elderly with a capacity of 5,598 persons;
- establishment of 19 new residential services for the elderly with a capacity of 765 users;

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331 Ordinance on the quality of social services, in force as of June 28, 2022, available at: https://www.lex.bg/bg/mobile/ldoc/2137223813, Art. 24, par. 1, item 1.
332 After funding under the "Development of Human Resources" Programme 2021-2027 ended, the necessary funds from the state budget for financing the new 345 social and integrated health and social services for over 9,200 users from 2026 are in the amount of nearly 201 million BGN per year. Part of the funds will be provided by making compensated changes within the budget for social services (from the closure of specialized institutions). The remaining sources of funding are: BGN 753 million from the Recovery and Resilience Plan, BGN 632 million under the Human Resources Development Program, co-financed by the national budget and the European Social Fund Plus (ESF+) and about 140 million BGN under the "Development of Human Resources" Programme, co-funded by the national budget and the European Fund for Regional Development.
support for developing work skills and inclusion in employment of persons with disabilities;
overhauls, interior repairs, remodeling, energy efficiency, measures to ensure an accessible environment and purchase of equipment and furnishings in 70% of 1,200 existing social services.

According to the Long-Term Care Action Plan 2022-2027, the expected results are:

- new services in the community for at least 2,700 persons with psycho-social and intellectual disabilities, with physical disabilities, with sensory disorders and with dementia, discharged from specialized institutions;
- new day care and residential services with a total capacity of more than 8,300 persons with disabilities and elderly people unable to provide for themselves created;
- patronage care and remote services for 32,000 persons with disabilities and elderly people unable to care for themselves provided;
- assistant support for 20,000 persons provided;
- assistant support for 20,000 persons provided;
- 41 existing specialized institutions for people with disabilities (intellectual and psycho-social disabilities, physical disabilities, sensory disorders and dementia) closed;
- new residential services for the elderly for over 750 persons created;
- improved environment in 840 of the already existing social services;
- all 82 homes for the elderly reformed in accordance with the Ordinance on the Quality of Social Services;
- increased professional capacity of employees and specialists in the system of long-term care services;
- communication and information technologies implemented in long-term care services.³³³

The Long-Term Care Action Plan 2022-2027, while noting some issues with guardianship, does not provide for any capacity reform. The primitive system that currently operates in Bulgaria deprives thousands of people under guardianship of basic human rights, including their right to access to court, their right to private and family life and their right to vote.

³³³ The Council of Ministers. Action plan for the period 2022-2027 for the implementation of the National Strategy for Long-Term Care, adopted by Decision No. 509 of the Council of Ministers of July 21, 2022, p. 53.
There are no applicants for personal assistants

According to SAA's first report on the implementation of the Personal Assistance Act, the beneficiaries of personal assistance in 2021 were a total of 49,505 - 4,592 children (4,516 children with 50% and over 50% disability, eligible for personal assistance and 76 children with 90% and over 90% disability, without the right to personal assistance) and 44,913 adults with 90% and over 90% disability, with the right to personal assistance. The funds paid for personal assistance are in the amount of EUR 140.27 million. The total number of applications for individual assessment of the needs of persons with disabilities was 254,469, of which 22,635 stated that they wished to use personal assistance, and 21,830 people were allocated a certain number of hours of personal assistance. In 2021, a total of 54,552 personal assistants worked, with 27,740 contracts concluded and 19,000 contracts terminated. According to the report, the largest share of users are persons with disabilities over the age of 65 and with the highest level of care dependency, requiring 85 to 168 hours of monthly assistance.

Municipalities providing the personal assistance service identify the main challenges in implementing the personal assistance mechanism:

- lack of applicants for the position of personal assistant;
- a large proportion of the assistants are over working age and are disabled themselves;
- the procedure for securing replacement assistants cannot be carried out due to lack of persons to replace the incumbent in their absence;
- the monthly monetary supplement to the pension of persons with the right to assistance from others under Art. 103 of the Social Security Code is suspended when the person is included in the personal assistance mechanism;
- the personal assistance mechanism does not cover travel expenses;
- the short administrative deadlines for preparing documents and entering the mandatory information in the platforms of SAA and the National Social Security Institute are currently not in line with the systems for internal financial control and document circulation in the municipalities;
- personal assistance is not available on weekends and holidays;
- dissatisfaction with the change in the pay ratio from 1.4 to 1.2 of the minimum wage.

Municipalities still do not have feedback from personal assistance users and their families about the service provided. There is a tendency to appoint as assistants persons from the users' family circle. The number of assistants who are not from the family circle is several

335 Ibid., p. 6.
336 Ibid., p. 10.
337 Ibid., p. 22.
times smaller than of those who are members of the user's family.\textsuperscript{338} Personal assistance users who work full-time or part-time are only 173.\textsuperscript{339} SAA quotes a report from one municipality that best sums up the situation under the Personal Assistance Act: “The impression is that the state guarantees financial support for the close family circle, and not adequate assistance for the person with a disability to ensure basic rights and provide daily needs”\textsuperscript{340}.

The first report of the newly created Agency for the Quality of Social Services, published in July 2022, also contains several key findings. Here are the main ones:

- The social services "Assistant support", "Information and counseling" and "Therapy and rehabilitation" have the largest share of users.\textsuperscript{341} But staff turnover, motivated by the low pay, does not allow the system to function normally.\textsuperscript{342}
- Most municipalities consider the lack of staff and low pay to be among the main problems. Social work in some residential services and institutions for disabled adults, even if suitable professionals are available, is limited to meeting basic needs such as nutrition, hygiene and sleep.\textsuperscript{343}
- The fewest number of specialists work in institutions for adults with disabilities, institutions for the elderly (36% of specialists) and residential-type social services (44% of specialists), in many of which the support of users is mainly expressed in the provision of medicines, food and maintaining hygiene.\textsuperscript{344}
- The total number of all appointed staff providing assistant support is 4,239. The number of specialists (specialists and medical professionals) is 3,974 (94% of all appointed staff) and the number of non-specialized staff is 265 (6% of all appointed staff).\textsuperscript{345}
- The environment is not accessible for people with disabilities in 84 of all 347 visited residential services (including institutions) for children, youth, adults with disabilities and the elderly.\textsuperscript{346}

**ECtHR decisions on cases of persons with mental disorders against Bulgaria**

In 2022, the ECtHR heard two cases of persons with mental disorders in which it found violations of their right to vote in parliamentary elections. The case of \textit{Anatoliy Marinov v.} 

\begin{itemize}
  \item \textsuperscript{338} Ibid., p. 28.
  \item \textsuperscript{339} Ibid., p. 29.
  \item \textsuperscript{340} Ibid., pp. 39 – 40.
  \item \textsuperscript{341} Agency for the Quality of Social Services, \textit{Annual Review of the State and Efficacy of Social Services 2021}, July 2022, p. 9, available at: https://aksu.government.bg/godishen-analiz-za-sastoyanieto-na-efektivnostta-na-sozialnite-uslugi/.
  \item \textsuperscript{342} Ibid., pp. 101 – 103.
  \item \textsuperscript{343} Ibid., p. 11.
  \item \textsuperscript{344} Ibid., p. 81.
  \item \textsuperscript{345} Ibid., p. 70.
  \item \textsuperscript{346} Ibid., p. 39.
\end{itemize}
**Bulgaria**347 concerns the applicant’s right to vote in parliamentary elections despite his status as a person under limited guardianship. Marinov has been placed under guardianship since 2000 due to mental disorder. Therefore and in compliance with Art. 42, para. 1 of the Constitution, he is deprived of the right to vote for the election of state and local bodies and in public polls. Although in 2015 Marinov and his guardian authorized a lawyer to take action to revoke the guardianship, the progress of the case was delayed due to an appeal. Meanwhile, 2017 came and parliamentary elections for the National Assembly were held. After he filed a new application to revoke the guardianship, a few months later the court granted his application. Before the ECtHR, Marinov complained that his automatic denial of the right to vote due to his placement under guardianship violates his right to vote under Art. 3 of Protocol No. 1 of the ECHR. The ECtHR found that the applicant's denial of the right to vote was arbitrary, automatically following from the fact of his being placed under guardianship, and that a proceeding for the annulment of the guardianship would not separately address the issue of his right to vote. The ECtHR found that the applicant's disenfranchisement of his right to vote was arbitrary, automatically following from the fact of his being placed under guardianship, and that a proceeding to lift the guardianship would not address separately the issue of his right to vote. The decision explained that if the motion to vacate the injunction was denied, the restriction would remain without examining the applicant's capacity to make informed choices in exercising his right to vote. The ECtHR notes that the legislator could leave it to the discretion of national courts on a case-by-case basis whether or not a person who meets the criteria for placement under guardianship has the capacity to vote; accordingly, to assess whether this right of his should be limited or not, regardless of the decision on the guardianship in general. According to Bulgarian legislation, the restriction is automatic and blanket - only by virtue of being placed under guardianship. The ECtHR found a violation of Art. 3 of Protocol No. 1 of the ECHR and awarded the applicant 3,000 euros for non-pecuniary damages and 1,926 euros for costs of legal representation.

The subject of the case in *Genchev v. Bulgaria*348 is the significant restriction of the applicant's right to vote in the parliamentary elections on 25 June 2005, which was imposed on the grounds that the applicant was mentally ill. The restriction was introduced by a decision issued by the head of the hospital where the applicant was admitted. The decision stated that only patients who are not under guardianship, have an ID card and are mentally sound can exercise their right to vote. Consequently, the director created medical boards to assess the psychological fitness of patients eligible to vote. The medical boards were empowered to decide whether a person was mentally fit to vote, and if they found the person unfit, they were not allowed to vote. On 15 June 2005, a medical board assessed the applicant's health

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status and found that he was unfit to vote. This means that the applicant could not vote in his polling station or in another polling station. The ECtHR is called upon to verify whether the limitation of the applicant's right to vote under Art. 3 of Protocol No. 1 constitutes a violation of this provision. To determine this, the Court examines whether the restriction meets the requirements of legality, i.e. whether it is "prescribed by law", whether it pursues a legitimate goal and whether it is proportionate to the goal pursued. The ECtHR concluded that there was no internal provision authorizing the director to carry out on his own initiative a medical assessment to assess the psychological fitness of patients to vote. In this sense, the Court accepted that the restriction was not "provided by law" and there was a violation of Art. 3 of Protocol No. 1 to the Convention.

Chapter 16. Rights of children

In 2022, there were no significant initiatives in the field of children's rights. Bulgaria continued to have no national strategy for children. A significant number of children, who were exposed to all the negative effects of institutionalization, continued to be housed and raised in various types of institutions. These effects were particularly negative for children with disabilities. FACCs are not an adequate form of non-institutional care, and foster care continued to be unattractive. Adoption continued to be a cumbersome and inefficient process. The closure of the existing Homes for Medical and Social Care for Children (HMSCC) was postponed. A serious problem was the care of the children, left with relatives and friends in the country, while the parents live or work permanently abroad. No action was taken to reform the outdated legal framework for children in conflict with the law.

Bulgaria does not have a National Strategy for the Child

After it was blocked in 2019, work on the draft National Strategy for the Child 2022-2030 has resumed. However, the state failed to “arrange” its policies in a common framework. The deinstitutionalization of childcare in Bulgaria is strategically planned to end in 2025. In 2022, the political voices claiming that the reform has been successfully completed increased. Deinstitutionalization has its achievements - it reduced the number of children in institutions by 97%, but even in 2022, the return of children into the community cannot be declared complete or even seamless.

The new stumbling block to child care deinstitutionalization

In 2022, the MLSP stated its intention not to proceed with the update of the Action Plan for the Implementation of the National Childcare Deinstitutionalization Strategy after 2021. In August 2022, the National Network for Children publicly summarized the views of civil society
organizations.\textsuperscript{349} According to the NGO sector, MLSP’s stated intention not to update the Plan for the Implementation of the National Strategy for Deinstitutionalization of Child Care after 2021 de facto means that there will no longer be a specific political focus on this reform. Such a decision is practically a rejection of the previous reform process.

The National Policy for Deinstitutionalization of Child Care in Bulgaria is strategically planned to end in 2025. It is assumed that all problems related to alternative care services for children in them will be solved through the National Plan for Implementation of the European Child Guarantee in compliance with the recommendation of the Council of the EU to create a European Guarantee for the Child (2030).\textsuperscript{350} The final draft of the Bulgarian Plan for the Implementation of the European Child Guarantee was prepared by the Interdepartmental Working Group of the Council of Ministers only on October 13, 2022. It is pending approval by the government. The new comprehensive EU Strategy on the Rights of the Child\textsuperscript{351} and the European Child Guarantee are important political initiatives proposed by the European Commission. Both initiatives are supported by Bulgaria. However, this does not detract from the fact that Bulgaria is without a National Strategy for the Child\textsuperscript{352} for the fourth year. There is also a lack of political will to adopt such a key document, there is no vision and horizon for the development of children’s policies.

Over half of the children in homes are under the age of 3

In 2023, a National Roadmap of Social Services in Bulgaria will be developed, which will present the current alternative picture of institutional care. According to the latest data\textsuperscript{353}, there are a total of 303 residential alternative services for children and youth in the country as of November 30, 2022 with 2,988 people employed. The most comprehensive residential service are FACCs for children and young people. There are 265 of them, with 2,769 children

\begin{itemize}
  \item Position of the National Network for Children, 8 August 2022, available at https://nmd.bg/13-speshni-zadatchi-pred-sluzechnoto-pravitelstvo-za-detsata-v-balgariva/.
  \item The European Commission’s initiative aims to ensure access to healthcare, education, childcare, affordable housing and adequate nutrition for the most vulnerable children in the EU. The adopted proposal for a recommendation to the Council to establish a European Child Guarantee to promote equal opportunities for children at risk is based on the fact that in 2019 almost 18 million children in the EU (22.2% of the child population) lived in households at risk of poverty or social exclusion. The European Child Guarantee aims to break this cycle and ensure access to key services for children at risk of poverty or social exclusion; available at: https://www.consilium.europa.eu/en/infographics/european-child-guarantee/.
  \item Work on the draft National Strategy for Children 2022-2030 was resumed in August 2022 but was not completed.
  \item According to SAA data provided to BHC with RD 04 – 0137/ 29 December 2022, pursuant to Art. 28, par. 2 and Art. 34 of the APIA, on the occasion of BHC’s application for access to public information, received in SAA with ref. No. 92-00-0355/ 15 December 2022.
\end{itemize}
and youth accommodated, of which 1,448 or 52.3% are children and youth with disabilities. 64 children with disabilities have been accommodated in FACC since the beginning of 2022. All children removed from FACCs during the same period are a total of 628 - children with and without disabilities. There are no newly built FACCs in 2022. The total number of successfully closed abandonment prevention cases in 2022 is 2,860.

A step forward in the development of social services was the preparation of the legislative proposal for the SSA and the by-law texts as of early 2019. In 2021, the Regulation on the Planning of Social Services was adopted. In mid-2022, the second key document of the SSA’s by-laws was also adopted, on which the group proposed a project - Ordinance on the Quality of Social Services. Despite progress in the reform of deinstitutionalisation of children, there are still institutions housing 240 young children, transferred to four institutions – HMSCCs. Of them, more than half - 124 children are under the age of 3 (52%), including children without disabilities.

The deinstitutionalization of the children did not end until 2021, as was written in the Bulgarian law. In 2022 again, the return to the community of children from institutions cannot be declared complete or even seamless for several telling reasons:

- There is no legislation and practice according to which infants and children up to the age of 3 should not be placed in residential care. The closure of the last 4 HMSCCs has been postponed again.

- According to MH data, no new alternative centres for overall services for children with chronic diseases and disabilities were created in 2022 either. The construction of new centres for disabled children in need of constant medical care is also slow.

- There are serious doubts about the effectiveness of FACCs. According to expert assessments, part of FACCs are de facto examples of "RE-institutionalization" due to lack of effective support for children, as well as staff policy; individual cases of violence have also been confirmed.

- No children are placed with one quarter of the foster families. Foster care still functions on a project basis. Interest in foster care in Bulgarian society has been constantly

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355 Adopted by Resolution of the Council of Ministers No. 135 of 22 June 2022. The document outlines new and more precise standards for the quality of social services, for their organization and management.
356 According to NSI data, 6 April 2022, HMSCC, available at the NSI website: https://www.nsi.bg.
357 According to MH data provided to BHC under APIA procedure with Decision 01-709/ 23 December 2022.
358 Ibid.
359 According to Art. 5, par. 1 of the Medical Institutions Act, the HMSCCs are medical institutions where no healthy children should be placed.
360 On 1 July 2020, the SSA became effective and for the first time in the text of a Bulgarian law, deadlines for closing institutions were set: by 2021 – for all homes for children, and by 2035 – for all homes for persons with disabilities.
decreasing, and this trend continues in 2022. In 2022, the alternative is no funds for training and supervision. There is public data on cases of violence and abuse of children in foster care. There is no specialization in foster care for children with severe disabilities and deviant behavior.

- More than 1,500 children are on the adoption lists per year and more than 1,400 applicants take the path to finding their child. Adoption is still a too cumbersome and inefficient process. Specialization and support for adoptive parents of children with special needs and with antisocial behavior remains wishful thinking. The improvement of the adoption system should find its development in the Bulgarian legislation.

The number of children with disabilities placed in foster families between the beginning of the year and November 30, 2022 is 179, according to official data. In the Register of approved foster families, 1,902 families are registered, of which 9 are volunteers and 1,893 are professional. The total number of children placed with foster families is 1,682. Foster families without children are 457, or one quarter. The number of nationally adopted children since the beginning of 2022 is 334, of which only 12 children are disabled, or 3.6%, which is just over 3 out of 100 children.

**FACC – the controversial alternative**

The positive trends in the reform for the deinstitutionalization of children are a fact. Yet even in 2022, the change did not occur for all children who do not live with their biological parents. Especially for children suffering from severe disabilities. The number of children with some contact with the protection system and placed in formal care has remained relatively high over the years - over 9,000. One third of them are in residential services - a total of 3,288 (2988 in the community, 240 in institutions - HMSCCs). Half of the existing FACCs in the country in 2022 are for children and youth with disabilities (FTACCYD), incl. 8 of them for children and youth in need of permanent medical care (FTACCYNMC).

Being raised like vegetables remains a key feature of the support for children with the most severe and multiple disabilities in FTACCYDs, BHC observations over the years show. The situation remains painful for both the children and their caregivers, and in 2022 the FTACCYDs in Pazardzhik, for example, are just one of the illustrations. In 2022, the two centres in Pazardzhik are home to 25 children and youth aged 3 to 31: 9 youth and 16 children.

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361 As a protective measure and social service.
362 According to SAA data, provided to BHC with RD 04 – 0137/ 29.12.2022.
363 All data cited in this paragraph relate to children placed in foster care under the “Accept me 2015” project.
364 The data of different institutions varies. According to data from the SACP as of 30 September 2021, 9,122 children do not live with their biological parents. According to SAA data as of 1 November 2021, 9,613 children are in formal care.
365 With a regulatory framework from 3 to 25 years.
Between 82% (9 out of 11) and 93% (13 out of 14) of the accommodated children and young adults have severe and multiple disabilities. All 11 children under the age of 18 are listed as "attending mainstream schools", but in fact this is only on paper: “The children are not in the classrooms, but are isolated in the offices of the resource teachers in the Resource Center from 8.00 to 11.30”\(^\text{366}\).

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The Case of M

The story of 18-year-old M.I. is just one example of the harrowing change for children with severe multiple disabilities. M.I. was raised for years in a baby crib, barely surviving. In 2022, staff testified that the child was "being grown like a plant." The team repeatedly sought assistance from all institutions to refer the girl to adequate service, especially as her condition worsened in the spring of 2022. On 21 June 2022, M.I. was taken to the emergency department of Pazardzhik Medical Center with epistatus. In April 2022, she was seen by a neurosurgeon and was diagnosed with: "severe surgically untreated and decompensated internal hydrocephalus, impaired general condition, hypotrophy of the four limbs with muscle contractures. Surgical treatment discussed but contraindicated, with appropriate palliative care"\(^\text{367}\). On her return to the center, the girl was in a comatose state, which requires re-hospitalization. September 2022 was the last month of M.I.'s life."

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The new old aggression problem

Acts of aggression at FACCs for children and youth without disabilities are not news for state institutions. At the end of 2018, the State Agency for Child Protection (SACP) found that in more than half of the facilities - in 75 (52%) of the total of 145 FTACCYDs - cases of violence were reported, most often between children, consisting of domestic conflicts that grow into insults, verbal and physical aggression. The number of facilities in which a total of 55 cases of violence by staff members against users were documented is also significant.\(^\text{368}\) FACC Samokov,\(^\text{369}\) for example, accommodates 15 non-disabled children aged 4 to 16. Aggression is the problem that the team has been unable to find a solution to for years.

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\(^{366}\) The assessment is by Diana Pashova, director of FTACCYD in Pazardzhik, July 06, 2022.

\(^{367}\) According to estimated data, there are between 6,000 and 8,000 children in our country who need palliative care. Bulgaria and Cyprus are the only countries in the EU where this type of support for children and their parents is not legally regulated. Palliative is the care of seriously ill patients, as a result of which their suffering is alleviated and their life is made as bearable and humane as possible. The goal is "not just to add more days to the lives of the sick, but more life to the days they have to live," states a pilot study of the Ida Foundation’s Mapping Pediatric Palliative project, whose focus is precisely palliative care for children: [https://www.facebook.com/idahospice](https://www.facebook.com/idahospice).

\(^{368}\) SACP, 30 January 2019, Results of routine inspections in Family Type Placement Centers (FTPC) and day care centers for children with disabilities.

\(^{369}\) The data in this section is from observation in a residential service in the town of Samokov in 2022, as well as according to the testimony of the director of the center Ivanka Sokolova.
The case M.

The 14-year-old boy has a central diagnosis of “behavioral and emotional disorder.” Over the past two years, he has been the instigator of more than 60 incidents, which the team reported to the emergency line 112. The episodes range from setting fire to hair and premises to threats with a knife. He has difficulty adapting in the FACC despite the multidisciplinary support.

The hybrid alternative – the better option

The number of health and social FACCs opened in the country for children and youth in need of constant medical care is 8 and all of them are functioning as of 1 January 2016. The capacity of each FTACCYNMC is for 8 persons, and the total number of children and youth accommodated there as of 31 March 2022 is 55, aged 3 to 18. For the period 1 January – 31 March 2022, 7 children were removed from these centres.

Permanent medical care centres as an integrated social and health care service of a residential type, in which children and young people with disabilities and in need of permanent medical care are accommodated, have two main tasks: providing a place to live for the target group and health care and monitoring in the interaction of the social and healthcare system. The Minister of Health designates a medical facility for hospital care, which carries out a specialized expert assessment of the health status of children and young adults, on the basis of which they are accommodated and carry out consultative examinations and inpatient treatment, if necessary. According to experts, the symbiosis between the social and healthcare systems gives children with disabilities a better chance for development.

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370 Statistics provided to BHC by SAA under APIA, in response to a request for access to public information with ref. No. A-62/May 12, 2022.
371 According to the Methodology for providing permanent medical care, approved by the Minister of Health with Order RD-01-210 of 2 October 2015. For all other activities, the MH methodology refers to the Methodological Guide for the conditions and procedures for providing the FTPC social service, approved by the SAA and the SACP.
372 During monitoring of the BHC on 1 July 3, 2023, it was found that in Plovdiv, for example, since December 01, 2015, there are 2 FTPCs for children with disabilities and in need of constant medical care and a Day Center for children with disabilities, structures of the “Sv. Petka” Complex for Social and Health Services. The capacity of the Day Center is 20 places, and at each of the FTPCs – 8 places. All three services are a state-delegated activity. For FTACCYNMC Plovdiv, the symbiosis is with the MH selected University General Hospital - Plovdiv. The individual plan for health care and prevention is the key to the future development of each of the children. The plan is prepared by a pediatrician from the hospital and coordinated with the director of the Complex for Social and Health Services. The 16 children accommodated in the two residential services are aged from 10 months to 14 years (according to regulations - from 0 to 18 years). Service users at the Day Center are children from the community and all FTACCYNMC children aged 3 to 14 years. The children placed in the residential services have multiple severe disabilities. About 50% of the accommodated children are of Roma ethnic origin. Six of the children accommodated in the two residential services are students from 2nd to 10th grades - two attend mainstream school, four are supported by resource teachers.
The phenomenon of “left-behind children” - every fourth or fifth child is left with relatives

According to experts, between 20 and 25% of children in Bulgaria have one or two parents who live or work permanently abroad. Among Roma families, this percentage increases to 37%. The phenomenon of “children left behind” is recognized as a problem in various countries in Europe, where there are also legislative measures and policies. In Bulgaria, the left behind children are “invisible” to the institutions - these children are not considered at risk and the state does not have a targeted support policy. Bulgaria has no official statistics on their actual number. No state institution collects or analyzes information about children whose parents live and work abroad. To date, two quantitative studies have been carried out for Bulgaria - by UNICEF from 2014, published in 2016, and by the EU Fundamental Rights Agency (FRA) and NSI from 2020.

The national representative study of UNICEF indicates that every fourth or fifth child in Bulgaria is left with relatives by their parents who are working abroad. The migration of the parents of most left-behind children is short-term, perhaps circular and seasonal. Most often, poor families, whose goal is survival, not enrichment, migrate. However, no definite conclusion can be drawn about the relationship between material status and parents’ migration abroad. The results of the research by the EU Fundamental Rights Agency and NSI detail the situation of children living in households where at least one parent has been abroad for more than three months in the last two years – 12.4% of children aged between 0 and 4 years are in this situation, 11.3% of children between 5 and 14 years and 10.2% of children between 15 and 17 years old.

The main recommendations for change are not the product of a purposeful state policy either. A report by experts from the ROMACT Program recommends that the procedure for guardianship and international exchange of data be simplified. In 2020, a report by the

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373 The data was presented at the forum “The child between labor migration, institutional norms and the extended family”, held on December 12, 2022 in Sofia. The forum was organized by the institution of the ombudsman Diana Kovacheva and the ROMACT program of the European Commission and the Council of Europe. The discussion is available at: https://fb.me/e/29xWQWXx.
376 Children left behind: between labour migration, institutional standards and extended family, June 2021, available in Bulgarian and English at: https://coe-romact.org/content/bg-report-children-left-behind-between-labour-migration-institutional-standards-and-extended-
377 The ROMACT program is a joint initiative of the Council of Europe and the European Commission, aiming to support local authorities to solve problems of the Roma communities and to engage in the dialogue between the majority and the minority at the local level.
Parliamentary Assembly of the Council of Europe (PACE)\textsuperscript{378} highlighted that “leaving millions of children without parental care is a massive violation of human rights and an unnecessary threat to the stability and prosperity of our countries. Targeted ad hoc measures are not enough to improve the situation. In order to maximize the benefits of labor migration while eliminating its harmful effects on children left behind, all countries must recognize the scale of this phenomenon and the long-term damage it causes”. PACE Recommendation 2196 (2021)\textsuperscript{379} and Resolution 2366 (2021)\textsuperscript{380} indicate the attention and care that should be provided to children left behind.

Children in conflict with the law

Despite the amendments, the current Law on Combating Antisocial Behavior of Minors and Juveniles\textsuperscript{381}, which regulates the responsibility for antisocial behavior of minors aged 8 to 14 and minors, reflects attitudes from 65 years ago. The punitive approach has long been rejected in youth justice. The policy of the Bulgarian state in the field of children’s justice is not based on reliable comprehensive information. The different institutions monitor different aspects of offenses committed by children.

Based on Ministry of Education and Science (MES)\textsuperscript{382} data, as of December 15, 2022, 3 schools for children with deviant behavior are functioning. A total of 94 girls and boys are being re-educated in boarding-type correctional institutions – 10 girls and 84 boys. Their distribution is as follows: 1 SPBS in the village of Varnentsi, Silistra district (25 boys), and 2 correctional boarding schools (CBSs) in the town of Rakitovo, Pazardzhik district (69 boys), and in the village of Podem, Pleven district (10 girls). 21 of the students are minors. An analysis by the MES\textsuperscript{383} specifies that 41.2\% of the children placed in CBS and SPBS by court decision were previously placed in a residential type social service, and for girls this percentage is 73.3\%. The MES data also show that 12 children are in the boarding schools because of running away from school, vagrancy and begging, and the remaining 72 - because of serious crimes, including murder committed by a minor. A large proportion of the children also have a certain


\textsuperscript{381} The Law on Combating Antisocial Behavior of Minors and Juveniles, effective as of 15 March 1958, is available at: https://lex.bg/laws/ldoc/2123897345.

\textsuperscript{382} Information provided by the MES to BHC under the APIA procedure with Decision No. 1104-5/23 December 2022.

\textsuperscript{383} Analysis on the need for reform in the system of correctional institutions for minors, prepared by MES experts, provided to BHC at a working meeting with the then Minister of Education and Science Academician Nikolay Denkov, June 2022.
psychopathology, for which appropriate psychotherapy should be provided. Work with addictions and the provision of medical care is within the prerogative of MH and cannot be provided by educational specialists. According to the MES, it is necessary to distribute the resources of the various departments, as well as to reformat the existing CBS and SPBS and to take out of the deep freeze the draft of the Law on Diversion from Criminal Proceedings, which was proposed back in 2016.

Chapter 17. Rights of LGBTI people

In 2022, some progress was noted in the situation of Lesbians, gay, bisexual, transgender and intersex (LGBTI) people in Bulgaria, which unfortunately did not transform into legislative changes or policies adopted and implemented into practice. This change, though quite slight, was, in the first place, a result of the policy of the government of Prime Minister Kiril Petkov's. Subsequently, it was continued by the acting Minister of Justice Krum Zarkov. However, on the transgender and intersex-specific issue of legal gender reassignment, no progress has been made.

Hate crimes and hate speech

In June, the ECtHR handed down its decision in the case of Stoyanova v. Bulgaria, concerning the failure to take into account the discriminatory motive based on the alleged homosexual orientation of a murder victim, when qualifying the act and when individualizing the punishment. The case concerns the murder of 25-year-old medical student Mihail Stoyanov in Borisova Gradina Park in Sofia in 2008. In the last days of Kiril Petkov's government and only a week after the ECtHR's ruling, a working group in the MJ adopted a draft amendment of the CCP, which, although with the subject of implementation of the decision of the ECtHR in the case of Kolevi v. Bulgaria, also introduced the qualification of aggravated offence for murder and bodily harm based on the sexual orientation of the victim. Meanwhile, an identical proposal was submitted to the National Assembly by a group of members of parliament from the “Democratic Bulgaria” coalition. Unfortunately, none of the two draft laws made it to plenary by the end of the 48th National Assembly.

384 Ibid.
385 See Right to life, protection from torture, inhuman and degrading treatment.
387 See Cooperation with international and local organizations for the protection of human rights.
In October, the Plovdiv-based media “Marica” disseminated information about postings on social networks about a series of attacks on gay men in the Mladezhkia Hill area of Plovdiv. According to the newspaper, the attackers were a group of about 10 teenagers who signed up on a mobile dating app for gay men. There they arranged dates with the victims, and in at least one case the injured person was attacked with a pellet handgun. The attacks were condemned by the “Green Movement” party. When asked by “Marica”, the police and the prosecutor’s office stated that they had not received any reports of these incidents.

In November, the SAC overturned an ACSC ruling that found the CPD had erred in not finding a violation of the prohibition against discrimination in public statements to the media and via Facebook by a Varna conservative Christian activist against the city's placement of a billboard depicting an embracing couple of gay men. In media interviews, the defendant in the proceedings characterized the photo as a crime under Art. 149 – 155 of PC – incitement to debauchery and fornication. In gross violation of the substantive law, the supreme judges ruled that “[i]n order for there to be discrimination on the basis of ‘sexual orientation’, the person who bases his claims on it must prove by a complete and overwhelming proof that Discrimination is present - Art. 9 of the LPD”. With this, the court demonstrated complete ignorance and misunderstanding of a basic concept in anti-discrimination law – shifting the burden of proof. According to the norms of art. 9 of the LPD, cited by the supreme judges themselves, when the party that claims to have been discriminated against presents facts on the basis of which it can be assumed that discrimination has taken place, the responding party must prove fully and primarily that the principle of equal treatment has not been violated. Secondly, the complaints at issue in the case are - inter alia - a breach of the 'harassment' prohibition. However, the supreme judges ruled that from the statements of the defendant in the administrative proceedings, “it cannot be conclusively assumed that it is a question of targeted behavior provoking a discriminatory attitude.” However, a categorical conclusion is not necessary. That is not what constitutes the offense of "harassment" in the definition of the LPD. What was required was to examine whether there was a purpose, or – alternatively – a result of the statements, which degraded the dignity of non-heterosexual people and created an offensive, threatening or hostile environment for them. Judging this is a matter of common sense. Public claims that even the image of an embracing same-sex couple can lead children to "debauchery" are, in addition to being clearly delusional, also tending to create public attitudes hostile to gay people that are portrayed as harmful to children. This does not require the opinion of an expert (which is given in administrative proceedings), nor even a

390 Plovdiv residents with different sexual orientations are lured and beaten, Marica, 10 October 2022, available at: https://www.marica.bg/plovdiv/krimi/primamvat-plovdivchani-s-razlichna-seksualna-orientaciq-i-gi-prebivat.
391 We cannot allow Plovdiv to become the European capital of homophobia, "Green Movement" PP, 10 October 2022, available at: https://zelenodvizhenie.bg/?p=6641.
392 SAC. Decision No. 10036 of 9 November 2022 under the administrative case No. 2747/2022 of the Supreme Court, 5th Chamber.
higher legal education. It is a matter of judgment in terms of rules of thumb and logic. At the beginning of the 21st century, the knowledge that sexual orientation cannot be nurtured and is not a mental disorder that can be learned behaviorally should be common knowledge. It is puzzling, however, why it is not so neither for the CPD judges, nor for the SAC judges, who heard the case as the last instance. The common sense and discretion of the court were superseded by the opinion of an expert in the administrative case file, who made the legal conclusion that the defendant in the proceedings had the right to express such a personal opinion in public. Further in its reasons, the SAC only discusses whether the respondent in the administrative proceedings intended to discriminate, and the analysis of the nature of her statements from the perspective of the addressees of this speech is replaced by a pseudo-scientific opinion of an expert. The SAC further discusses the Christian activist's freedom of expression under Art. 10 of the ECHR and other norms, without carrying out the due analysis for balance with the right to respect for private and family life under Art. 8 of the ECHR. The decision of the SAC is final, and in relation to the protection thus denied to LGBTI people in the case, an appeal has been lodged with the ECtHR, pending an admissibility review.

Equality and non-discrimination

LPD practice in cases of unequal treatment of LGBTI people remains scarce. What is more, the statistics on the number of complaints on attributes of protection practically do not exist. This was established by the BHC in the framework of its research for the preparation of this report. In response to a request for access to public information regarding the number of complaints received in the CPD for individual attributes protected by law for 2022, the Commission responded that it "does not keep statistics on the number of all complaints received by attributes". The explanation for this, set out in the CPD's decision on the application, as well as in a clarification letter, is that procedures are not initiated for all complaints received; that CPD had no obligation to prepare, maintain and store reports in the form in which they were requested (number of complaints received based on individual attributes); and that, for these reasons, the Commission has data on the case files created on individual grounds, but not on the complaints received. Thus, the data presented in the annual report of the BHK on human rights in Bulgaria in 2021, pp. 154 – 155, should be read as data on the number of case files created, and not on the number of complaints received.

Having said that, in the last six years the CPD has opened a total of 24 cases of discrimination on the basis of sexual orientation and ruled on 33. Compared to the other main attributes (the attributes under the anti-discrimination directives and the EU Charter of Fundamental Rights), for the attribute "damage", the data are respectively 1,924 files and 2,094 judgments; for the attribute "age" - 223 case files and 279 pronouncements; for the

393 CPD. Decision No. 3 of 14 February 2023 on providing access to public information.
394 It should noted that the high number of files under the sign "damage" is probably due not only to received complaints and reports, but also to proceedings initiated based on a self-referral report, in view of the campaign for accessible architectural environment “Accessible Bulgaria”, initiated from the beginning of the term of office of the member of the CPD Petar Kichaski.
attributes "race", "nationality", "ethnicity", "citizenship" and "origin" in total - 316 files and 359 pronouncements; for the attribute "religion and faith" - 81 files and 65 pronouncements; for the sign "gender" - 128 files and 168 pronouncements. These data are alarming against the backdrop of data on both perceptions of discrimination based on sexual orientation in society, and perceptions of discrimination within the LGBTI community itself, which are high. Inertia in reporting discrimination on the basis of sexual orientation to the national equality body can be explained by fear and resignation in the face of homo- and biphobia in the victims themselves, by mistrust of the national equality body or by low awareness of this possibility of protection. In all three cases, however, it is the CPD's responsibility to take decisive action to inform about and encourage the community to resort to the protections owed in cases of discrimination based on sexual orientation.

Chart 0000. Number of CPD case files created on the basis of “sexual orientation” attribute compared to the number of case files created concerning the other five main attributes for the period 2017 - 2022.

Chart 0000. Number of closed CPD case files on the “sexual orientation” attribute, compared to the number of closed case files on the other five main attributes for the period 2017-2022.
Personal and family life

Following the decision of the CJEU in the *Pancharevo* case in December 2021, concerning the refusal of the Bulgarian authorities to issue a passport and a Bulgarian birth certificate to a child born on the territory of Spain to a same-sex female couple consisting of a Bulgarian and a British national, in May the ACSC ruled with a decision, fully complying with the decision of the CJEU on the preliminary ruling. The administrative court obliged the Metropolitan Municipality - Pancharevo district to issue the child's birth certificate. In June, however, the Municipality submitted a cassation appeal to the SAC. The case remained pending before the Supreme Court during the reporting period.

Legal recognition of gender

In 2021, after the CC ruled on constitutional case No. 6/2021, ruling that "in the understanding of the concept of "gender", the constitutional legislator in 1991 did not insert any content other than the traditional one, i.e. the biological one based on the gender binary",

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395 Court of the EU. Decision in Case No. C-490/20, V.M.A. v. Stolichna obshtina, rayon 'Pancharevo' dated 14 December 2021
396 ACSC. Decision No. 3251 of 13 May 2022 on administrative case No. 3654/2020 of the ACSC, 22 panel, available at: https://search-sofia-adms-g.justice.bg/Acts/GetActContent?BlobID=090a4929-8325-484b-8da4-ad0ebd70e3dc.
398 CC. Decision No. 15 of 26 October 2021 under const. case No. 6/2021, available at: https://www.constcourt.bg/bg/Acts/GetHtmlContent/5aca41e4-659e-42dc-80a5-c3f31746898b.
in 2022 the SCC, at whose request the constitutional case was initiated, did not issue a decision on its own interpretative case No. 2/2020, which aims to unify the conflicting case law on the issue of admissibility of the change of gender data in the civil status registers of transgender and intersex people.

Meanwhile, the BSP, particularly their leader Cornelia Ninova, continued to exploit the pseudo-scientific concept of "gender ideology" and a distorted understanding of the concept of "gender" to oppose the strengthening of domestic and gender-based violence protection legislation. In late December, the BSP, together with the ultra-nationalist Vazrazhdane party, opposed the BALPDV399, which improves legal protection proceedings and the scope of protection and which creates a National Council for the Prevention and Protection of Domestic Violence. Part of the BSP's criticism is that the amendments allow children under the age of 14 to report domestic violence and file cases on their own behalf against their parents, and this could "open the gates of hell for many families". In a speech, Ninova stated: "In the Istanbul Convention, behind the alleged fight against domestic violence, the so-called third social gender is introduced, which is not male or female, but according to how one feels in a social role. The proponents and defenders of the Istanbul Convention refused to strongly propose it for ratification, but various legislative initiatives - textbooks, teaching aids, began to introduce various trends for the so-called gender ideology400.

Freedom of expression, assembly and association

On 2 July 2022, the second "Burgas Pride" took place - the only mass public LGBTI event outside the capital city. In 2021, after the police allowed anti-pride protesters to deviate from their original route and block the participants' path, preventing the march from taking place, the 2022 Pride was announced and planned only among representatives of the community. This led to the lower participation and media publicity of the event, in which about 10 people took part.

In September, the ECtHR registered the complaint of the organizer of "Burgas Pride" Rusi Milev and several other LGBTI activists, in connection with the refusals of the prosecutor's office to initiate pre-trial proceedings for the prevention of the march in 2021.401 The complainants are represented by attorney Natasha Dobreva.

On June 18, the 15th "Sofia Pride" was held, where over 12,000 people gathered. In stark contrast to the previous year, this edition of Pride went off peacefully and without a major counter-demonstration by far-right nationalists. Several counter-demonstrations of conservative reaction were organized.

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401 Milev and Others v. Bulgaria (Petition No. 44683/22).