



BULGARIAN
HELSINKI
COMMITTEE

**ALTERNATIVE REPORT ON THE
IMPLEMENTATION OF THE UN
CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT**

(CONVENTION AGAINST TORTURE)

BULGARIA

TORTURE AND MISTREATMENT



B U L G A R I A N
H E L S I N K I
C O M M I T T E E

The **Bulgarian Helsinki Committee (BHC)** was established on 14 July 1992 as an independent non-governmental organisation for the protection of human rights.

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

The backbone of the committee's **activities** is systematic monitoring of the human rights situation in the country. It gives us information on the state and development of human rights domestically and supplies our legal defence programme with cases of human rights violations for litigation before the domestic and international courts. In addition, the committee reports on human rights violations with a special emphasis on the rights of ethnic and religious minorities, refugees and asylum-seekers, rights of the child, protection from torture and ill-treatment, freedom of expression and association, problems of the criminal justice system.

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

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EXECUTIVE SUMMARY

The Bulgarian *Criminal Code* does not criminalize torture. There was some progress in criminalization of hate crimes. The sanctions for incitement to discrimination, hostility and hatred as well as violence and property damage (including temple desecration) on the grounds of race, ethnicity, nationality, religion were increased in 2011, although often they are comparable to those provided for the perpetration of the same criminal acts without the bias-related motives. Murder and bodily injury inflicted with racist or xenophobic motives are punishable with heavier penalties. No such provisions exist in relation to hate crimes perpetrated on other protected grounds, such as sexual orientation, disability, age, etc. Moreover, the choice whether to apply these provisions in case of bias-motivated crimes lies entirely within the **discretion of the prosecution and the investigation authorities** and the gathered evidence as there is no imperative legal provision that obliges the authorities to take this specific motive into account, at least not before presenting the perpetrator with the charges. The practice shows that **the conviction rates are very low**, while the political, media and societal climate was dominated by intense public incitement to hatred and discrimination towards Roma, Muslims, migrants and LGBT persons.

Although **access to a lawyer** during police detention is guaranteed by law, the practice reveals different problematic areas in the implementation of this right. These range from violation of the right to information about the detainee's right of access to a lawyer, active discouragement to ask for a lawyer or appointment of public defenders who are not independent from the police. Police detention before formal charges does not trigger guarantees for legal assistance, including obligatory presence of a lawyer during questioning for vulnerable categories such as minors and persons with mental disabilities. Legal assistance is very rare at this stage. Non-presence of the lawyers at the first formal interrogations is also common. Recent surveys reveal that over **70% of detainees do not have access to a lawyer** from the very outset of the criminal proceedings.

The practical and meaningful operation of fundamental safeguards against police ill-treatment (including having a third party informed, access to a lawyer, access to a doctor and information on the rights) is not ensured. **Every third detained person is a victim of physical abuse** by the police upon arrest or inside police stations. The abuse inside police stations is more frequent than the force used upon arrest. The share of Roma who report being victims of physical violence is **twice as high** as that of Bulgarians. **Detained persons who do not have lawyers are twice as likely to become victims of police abuse.** Although in 2015 the Ministry of Interior adopted an *Ordinance on the Use of Force and Auxiliary Means*, it does not maintain a registry of their use and police officers who use force unlawfully are not prosecuted and punished. Research of the practice shows that there is still no information system in operation to provide data on the investigations into police ill-treatment. **Police ill-treatment is punished rarely and with very lenient penalties leaving the victims without an effective protection mechanism.** The European Court of Human Rights (ECtHR) continues to find violations of Article 3 and Article 13 of the *European Convention on Human Rights* (ECHR), but the Court's case-law is not taken into consideration in the national jurisprudence and impunity in cases of police brutality at the national level is a norm.

In a positive step towards protection from **domestic violence**, the Council of Europe *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)* was signed on 21 April 2016. However, the work on review and preparation of national legislation for conformity with the Convention was stopped for an unspecified period. In the meantime, the case-

law of the domestic courts reveals substantial flaws: interpretation as domestic violence only of instances of physical violence; failure to recognise inaction as a form of violence; refusal to grant a request for protection from domestic violence if no evidence confirms the date when the domestic violence was committed; disregard of the continued/systemic character of the committed violence; refusal to grant stronger protection upon a new act of violence, as the term of the preceding one has not yet expired; the courts' omission to impose fines on the perpetrator, in contradiction with the law; court orders' enforcement being inefficient as a result of incompetence, poor grasp of the problem, lack of sensitivity, and overall inaction by police bodies and the Prosecutor's office – **all leading to a failure to provide genuine protection from domestic violence.**

Combating trafficking in human beings in Bulgaria faces the main challenges of low conviction rates, poor service provision to victims and the legal, financial and expertise obstacles to ensuring effective protection of victims, both children and adults. Identified victims of trafficking and the criminal proceedings of trafficking have been decreasing from around 540 in 2013 to around 250 in 2016, according to official data. The conviction rates are low. Under the 2003 *Combating Trafficking in Human Beings Act*, protection services for victims were supposed to be provided by shelters for temporary accommodation, three of which were set up only in 2016 with a total capacity of 14 persons. In the meantime, victim protection was and is being provided by so called 'crisis centres' (with a total capacity of 211 places) – residential services that are not adapted to the needs of victims of trafficking and do not provide regular medical care, attendance of school for the children and legal services and protection from the traffickers.

After ECtHR delivered its judgement in the case of *Stanev v. Bulgaria* in 2012 and the ratification of the *UN Convention on the Rights of Persons with Disabilities*, the work on review and elaboration of new legislation on abolition of plenary guardianship and introduction of supported decision-making measures began. As a result, in 2016 in collaboration with a number of non-governmental organisations the Government drafted a *Natural Persons and Support Measures Act*, which was introduced for voting in parliament. It was, however, not presented for debate and adoption at present. The prospects for its adoption are unclear. In the meantime, according to the findings of a recent research, the majority of persons with intellectual disabilities or/and psychosocial problems living in institutions and community-based residential services are placed under guardianship. Inhuman and degrading degrading and inhuman treatment was identified in these institutions and very rarely an individual approach and respect for the human rights of the residents in the new residential services was ensured.

Deinstitutionalisation in childcare started actively in 2010. In the course of six years, some progress was achieved in terms of ensuring a family environment by placing children in foster care, adoptive families and families of relatives. The number of children living in institutions has decreased six-fold. Unfortunately, during the first four years of this process deinstitutionalization did not take place for around 30% of the children from institutions leaving the system, as they either died or were transferred to other institutions. A great part of the institutionalised children were housed in accommodation centres, which tend to turn into small institutions. **Deaths and injuries that have taken place previously and continue to take place still in residential institutions and services remain unmonitored and not prosecuted.**

After the 2015 ECtHR judgement in the case of *Neshkov and Others v. Bulgaria* and the Committee for Prevention of Torture's public statement, the conditions in places for deprivation of liberty were

reported as being in the process of improvement. A major achievement in this respect were the amendments to the *Execution of Punishments and Detention on Remand Act* adopted in January 2017. The main highlights of the amendments are: **determination of the conditions of detention that constitute inhuman or degrading treatment or punishment** towards individuals serving sentences as well as those detained on remand; **introduction of a minimum standard for personal living space** in dormitories at all prisons and detention centres in Bulgaria **set at 4 sq. m. per prisoner or detainee**; introduction of the possibility for the courts to assign the general regime to those convicted for serious crimes, who are not considered a threat to society, and to review the initial strict regime one year after it has been assigned; **right to appeal decisions** issued by the bodies responsible for the execution of punishments before the competent administrative court; **right to request from the court the termination of any action or inaction** by bodies responsible for the execution of punishments or by officials, should these **constitute a violation of the prohibition of torture, inhuman and degrading treatment**; **right to claim compensation** for damages inflicted by bodies responsible for the execution of punishments in cases of torture, inhuman and degrading treatment; introduction of **a more favourable regime for conditional early release** in the *Criminal Procedure Code*, including the possibility for prisoners to access the courts themselves.

Monitoring revealed that the physical conditions in the most overcrowded prisons had not improved by the end of 2016. Incidents of unlawful use of force and auxiliary means are not regularly, consistently and uniformly registered. Data gathered in visited prisons by independent observers and the one provided by the Ministry of Justice differ significantly.

Since 2014, the number of migrants entering Bulgaria has increased. Those who have to stay in Bulgaria face serious difficulties in dealing with the discriminatory attitudes of authorities and private individuals and groups. In the period between 2014 and 2016, the Bulgarian Helsinki Committee received **numerous complaints from migrants of bias-motivated physical abuse, robberies and insults by border police and other law enforcement officials**. Private vigilante groups 'hunting' for migrants near the Bulgarian-Turkish border have also physically abused, detained and robbed migrants on numerous occasions. Prosecution offices and courts acquit the perpetrators.

Formally, **self-incriminating statements/confessions** do not have evidential value in criminal proceedings and should not reach the courts in Bulgaria. A 2017 BHC research of criminal case files revealed that self-incriminating statements/confessions, given by suspected persons prior to the initiation of the criminal proceedings or during the criminal proceedings but without following the prescribed legal procedure, are presented to the court by the prosecutor and are then included in court case file and remain there for the whole duration of the criminal proceedings. The court does not examine the circumstances under which such statements are taken, whether suggestive or coerced police conduct was used, nor the use of procedural safeguards effective for securing the privilege against self-incrimination of the persons questioned. **Interrogation of police officers in their capacity of witnesses**, who have previously obtained self-incriminating confessions from a suspect, held in police custody prior to the formal initiation of criminal proceedings and without the presence of a lawyer, is a commonly-used technique for the collection of evidence in criminal proceedings in Bulgaria. The Supreme Court of Cassation' jurisprudence in terms of the admissibility of such evidence is inconsistent.

The new 2016 *Combating Terrorism Act* provides for various preventive measures, some of which may affect in an unjustified way the privacy, right to freedom of movement and other human rights

of individuals deemed by the law enforcement authorities under reasonable assumption to “constitute a terrorist threat”. Persons who do not pose such a threat may also be affected by curtailing their rights.

The possibility for **non-governmental human rights organisations to monitor human rights violations** in Bulgarian closed institutions deteriorated over the past three years. The Ministry of Health, the Ministry of Labour and Social Policy, and the Ministry of Education refused to extend the duration of the temporary agreements concluded with the Bulgarian Helsinki Committee, which gave the organisation access to psychiatric hospitals, childcare institutions, social care institutions for persons with mental disabilities, special schools for children with developmental disabilities and schools for children with delinquent behaviour. BHC used to have free access to all these institutions in the past. The law was not amended in order to allow human rights non-governmental organisations to interview remand prisoners without seeking a permission from the prosecutor.

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1. DEFINITION OF TORTURE IN THE CRIMINAL CODE. JURISDICTION OF TORTURE CRIMES AND LIMITATION PERIODS. HATE CRIMES UNDER THE CRIMINAL CODE

1.1. Torture in the Bulgarian Criminal Code

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

Article 589 of the draft attempts to formulate a **definition of torture**. Paragraph 1 defines it as an act of any person without any requirement that he/she acts in an official capacity. Paragraph 2 of the draft introduces a qualified crime of torture perpetrated by a public official. Both torture perpetrated by a private person and by a public official are defined as crimes against humanity. The purposes of the acts of torture are not defined exhaustively in accordance with Article 1 of the Convention. “Coercion” in the draft is defined only as a coercion “to act against one’s will” and not as a coercion to suffer. The discrimination purposes are also narrowed by introducing only a limited number of “protected grounds”.¹ The draft of the *Criminal Code* has not been voted in parliament yet. The main coalition partner in the governing coalition envisaged the adoption of a new *Criminal Code* in its election platform, but it is unclear whether the 2013 draft will be used for this purpose.

1.2. Hate crimes

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

Article 162 of the *Criminal Code* provides that “whoever through words, printing materials or other mass media, through electronic information systems or in other way **propagates or incites to discrimination, hostility or hatred based on race, nationality or ethnic belonging**, shall be punished

¹ Bulgarian Helsinki Committee, *Critical remarks about the draft of Criminal Code*, announced for discussion by the Ministry of Justice on 21 December 2013, January 2014, available in Bulgarian at: http://www.bghelsinki.org/media/uploads/documents/expert_statements/2014-01_kritichni-belezhki-vyrhu-proekta-za-nov-nk.pdf.

by deprivation of liberty between one and four years and with a fine between BGN 5,000 and 10,000 (EUR 2,500 and 5,000), as well as by public reprimand”.²

For **murder committed with hooligan, racist and xenophobic motives** the penalty shall be deprivation of liberty between 15 and 20 years, life imprisonment or life imprisonment without parole.³

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

1. deprivation of liberty between three and 15 years for severe bodily injury;
2. deprivation of liberty between two and ten years for medium bodily injury;
3. deprivation of liberty for up to three years for light bodily injury consisting of health disorder and up to one year or probation when the victim suffered pain but without health disorder.⁴

Infliction of any type of bodily injury with racist or xenophobic motives is an aggravated crime punishable by **longer terms of deprivation of liberty** compared to the ordinary crimes of infliction of bodily injury. It also makes the infliction of light bodily injury with such motives a crime, which is **prosecutable by a public prosecutor**, unlike most other cases of infliction of light bodily injury, which is subject to private prosecution.⁵

It should be noted that a separate provision of the *Criminal Code* deals with violence in general terms specifically motivated by bias on several grounds: “Whoever **uses violence** against another or **damages his/her property because of his/her race, nationality or ethnical origin, religion or political convictions**, shall be punished by imprisonment of up to four years, a fine between BGN 5,000 and 10,000 (EUR 2,500–5,000) and public reprimand”.⁶ However, the general provision of the *Criminal Code* on damaging another person’s property provides for higher penalties – up to five years of imprisonment.⁷

The choice whether to apply one or both of the provisions in cases involving bias-motivated violence is involved lies entirely within the **discretion of the prosecution and the investigation authorities** and the evidence gathered as there is no imperative legal provision to oblige them to take the specific motive into account.⁸

The *Criminal Code* contains a separate provision that deals in particular with threats intended to prevent individuals from practicing their religious beliefs: “A person who, **by force or threat hinders citizens from freely practising their faith or from performing their religious rituals and services**, which do not violate the laws of the country, the public order and morality, shall be punished by deprivation of liberty of **up to one year**. The same punishment shall also be imposed upon a person who in the same way compels another to take part in religious rituals and services”.⁹ However, the

² Bulgaria, *Criminal Code (Наказателен кодекс)* (02.04.1968), Art. 162(1) (last amended 27.05.2011), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/1589654529>.

³ *Ibid*, Art. 116(1)(11) (last amended 27.05.2011).

⁴ *Ibid*, Art. 131(1)(12) (last amended 27.05.2011).

⁵ *Ibid*, Art. 161(1).

⁶ *Ibid*, Art. 162(2) (last amended 27.05.2011).

⁷ *Ibid*, Art. 216(1).

⁸ Bulgaria, *Criminal Procedure Code* (26.04.2006), Art. 219(3)(3).

⁹ Bulgaria, *Criminal Code* (02.04.1968), Art. 165(1) and (2).

general provision of the *Criminal Code* on coercion provides for higher penalties – **up to six years of imprisonment**.¹⁰

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

As to the **acts of vandalism against places of worship** the *Criminal Code* provides that “whoever **desecrates, destroys or damages** a religious temple, devotional house, sanctuary or an adjacent building, their symbols or gravestones, shall be punished by imprisonment of up to three years or probation and a fine between BGN 3,000 and 10,000 (EUR 1,500 - 5,000)”.¹¹ Again, the **penalty is lower** than the one provided for a simple/general case of property damage.

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

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

In general, police officers, prosecutors and judges should take into account the racist or xenophobic motive as otherwise the case cannot be tried under this particular text, i.e. when deciding to prosecute, the investigation authorities and the prosecution should have already taken the racist motive into consideration as they need to qualify the act under the *Criminal Code* when presenting the perpetrator with the charges.¹² However, the law leaves it to the discretion of the investigation bodies/judges to a large extent whether a discriminatory motive should prompt a harsher sentence as there are no particular guidelines as to how such motives should be regarded and therefore the decision on that matter could be subjective. The law provides that “the court and the investigation bodies shall take their decisions by inner conviction, based on an objective, thorough and complete inspection of all circumstances of the case, under the guidance of the law”.¹³

¹⁰ Bulgaria, *Criminal Code* (02.04.1968), Art. 143(1).

¹¹ *Ibid*, Art. 164(2).

¹² Bulgaria, *Criminal Procedure Code* (26.04.2006), Art. 219(3)(3), available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135512224>.

¹³ Bulgaria, *Criminal Procedure Code* (26.04.2006), Art. 14(1).

2. ACCESS TO LEGAL ASSISTANCE DURING THE 24-HOUR POLICE DETENTION, INCLUDING LEGAL AID AND ACCESS OF THE LAWYER TO THE DETAINEE

2.1. Legal requirements and practice in provision of legal assistance

The right of access to a lawyer is a fundamental right under the *Constitution* of the Republic of Bulgaria; this right can be exercised immediately **upon arrest or at the time of presenting a criminal charge to a person**.¹⁴ However, Bulgarian domestic law and jurisprudence define the 24-hour **police detention measure of an individual suspected of having committed an offence as an administrative measure regulated by administrative law that falls outside the scope of the national criminal proceedings *sensu stricto***. Since suspects detained by the police do not have formal standing in criminal proceedings, their access to a lawyer and right to legal aid are not guaranteed in the same way as in the case of the accused. In police detention the legal assistance should be provided only upon request of the detainee. Vulnerable groups, such as children or persons with mental disabilities for whom there is mandatory defence in criminal proceedings, are not protected before the presentation of the formal charges.

The access to a lawyer **when the person is formally charged and becomes accused** aims at providing legal defence in initiated criminal proceedings. At this stage, in some cases listed in the *Criminal Procedure Code* legal defence is mandatory and in these cases the investigation authorities and judges appoint attorneys-at-law to provide it. **Legal defence is mandatory** in the following cases: when the accused persons are adolescents (14 to 18 years of age); the accused persons have physical or mental disabilities that prevent them from legally defending themselves; the persons are accused of an offence that is punishable by deprivation of liberty for a minimum of ten years or an offence punishable with a more serious penalty; when the case is decided in the absence of the accused person; when the accused person cannot afford to pay for the attorney's services, but wants to have an attorney and this is required in the interests of justice.¹⁵ In two other cases legal defence is mandatory unless the accused person waives his/her right to a lawyer – when the accused person does not understand Bulgarian language and when the accused persons have contradictory interests and one of them has a lawyer.

During administrative police detention, the right of access to a lawyer is triggered after the detained person specifically requests legal services. The police officer on duty is obliged **to immediately contact by phone the detainee's lawyer of choice or a public defender** (if the detainee does not have a personal/private lawyer), with information about the detainee's personal data and state, as well as about the reasons for their arrest.¹⁶ The detainee has the right to choose a public defender from a list of lawyers on call (selected from the National Legal Aid Registry), which should be

¹⁴ Bulgaria, *Constitution* of the Republic of Bulgaria, Art. 30(4), available in Bulgarian at: <http://www.lex.bg/laws/ldoc/521957377>.

¹⁵ Bulgaria, *Criminal Procedure Code*, Art. 94(1).

¹⁶ Bulgaria, Ministry of Interior, *Instruction 81213-78 of 24 January 2015 on the Order for Executing Arrests, and the Accommodation Requirements, Rules and Procedures at Detention Facilities of the Ministry of Interior*, Art. 15(7).

available in the police department and displayed at a location that is accessible to detainees.¹⁷ However, the *Legal Aid Act* does not guarantee that the detainee will receive the services of the public defender of his/her choice (“whenever possible, the Bar Association shall appoint the attorney requested by the person receiving the legal assistance”).¹⁸ In any case, such appointments of public defenders are very rare.

Police officers have additional obligations – which are regulated by a supplemental instruction issued by the Prosecutor General in 2011 – **to provide the detained person with a lawyer within 2 hours of arrest, to ensure that the lawyer is allowed access to the detainee within 30 minutes of arrival at the detention facility; to ensure that a lawyer is present at the detainee’s very first police interrogation;** if the appointed lawyer fails to appear at the detention facility in a timely manner the investigation authorities may file a complaint requesting that the lawyer be subject to disciplinary action.¹⁹

Bulgarian legislation does not provide for any **effective monitoring mechanisms to oversee the quality of public defender services**, which is a very vaguely marked obligation of the local bar associations. Standards for quality, assessment and control over *ex officio* legal aid were adopted **only in 2014**.²⁰ According to these, public defenders should consult the clients about their rights, should discuss with them their strategy for legal protection, should get acquainted with their case file, shall not be allowed to receive any compensation from their beneficiaries and should provide services to the highest possible standards. The assessment of their work by the National Legal Aid Bureau for the purpose of allocation of payment is done based on the type of the case, the legal and factual complexity of the case, the number of lawyer’s interventions (complaints, appeals, etc.), the outcome of the case and the contribution of the lawyer to it.²¹ However, **legal defence services are currently not subject to any quality assessment.**

As part of a research on police detention, in 2015 the Bulgarian Helsinki Committee interviewed a number of practicing lawyers. All of them were of the shared opinion that, in general, **detainees have access to legal aid if and only after they are charged with a criminal offense**.²² Before that, legal aid is not available in practice.

¹⁷ Bulgaria, *Legal Aid Act*, Art. 28(2).

¹⁸ *Ibid*, Art. 25(5).

¹⁹ Bulgaria, Prosecutor General, *Instruction 134/11.04.2011 on the Actions that Pre-trial Authorities may Undertake in Relation to Lawyers* (Инструкция 134 от 11.04.2011 г. на главния прокурор относно действията, които могат да извършват органите на досъдебното производство по отношение на адвокату) 2011, Art. 7, Art. 8 and Art. 14, available in Bulgarian at: <http://svak.lex.bg/news.html&pn=15&id=964>.

²⁰ National Legal Aid Bureau, *Standards for Quality, Assessment and Control over Ex Officio Legal Aid*, Instruction Letter 14-03-26, dated 29.04.2014 of the chairperson of the National Legal Aid Bureau, Elena Cherneva-Markova, available in Bulgarian at: <http://www.nbpp.government.bg/images/20150224134212.pdf>.

²¹ Judging by the data presented in the *2015 Report on the Activity of the National Legal Aid Bureau*, p. 7 (available in Bulgarian at: http://www.nbpp.government.bg/images/Otchetan_doklad_2015_final.pdf) concerning disciplinary proceedings against public defenders, it can be concluded that the quality of their services is very good since **only 22 lawyers (out of a total of 5,272 registered lawyers) were removed from the Legal Aid Registry due to imposed disciplinary action, six of which were incurred due to violations of the Legal Aid Act.**

²² Bulgarian Helsinki Committee, *The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons* (2017), available in English at: http://www.bghelsinki.org/media/uploads/2016police_en.pdf. According to the research, the likelihood that a

In its report from the 2014 visit to Bulgaria, the Committee for the Prevention of Torture (CPT) states: *“The delegation found that it was **still very rare (and even exceptional)** for detained persons to benefit from the presence and the services of a lawyer at the very outset of their deprivation of liberty by the police and in general during the initial period of 24 hours of police custody; moreover, some persons alleged that they had only been in a position to meet their lawyer during the first court hearing (when the issue of possible imposition of a preventive measure was being considered)”*. The CPT also reveals (after consultation of relevant registers and case files) that, even when the (usually *ex officio*) lawyer was requested by the police to come, **this almost invariably happened at the very end of the 24-hour period of custody**, thus generally after the detained person had already been interviewed and after his/her confession or statement had been drafted by the police. The impression was, therefore, that the lawyer’s presence was of a **purely formal nature**, aimed at ensuring that the detention protocol is “duly” filled in and contains the lawyer’s signature. Furthermore, the CPT delegation received several complaints according to which the police had **actively discouraged persons in their custody from exercising their right to have a lawyer** present and assisting them, by either stating that they “did not need a lawyer” at this stage of the procedure or by claiming that the lawyer (in particular, when the person requested that his/her own lawyer be contacted) “could not be reached” or “was not willing” to come to the police establishment.²³ The CPT delegation again heard many allegations according to which, even in those rare cases when the detained persons did meet their lawyers while in police custody, such **meetings systematically took place in the presence of police officers**.²⁴

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

Between November 2016 and February 2017, the Bulgarian Helsinki Committee (BHC) carried out a large-scale survey²⁵ among **1,357 convicted prisoners from all prisons and prisons hostels** in Bulgaria, whose criminal proceedings had started after January 2015. The survey posed two major questions relating to **access to a lawyer** during the criminal proceedings (in a broad sense, i.e.

detainee may be assigned a lawyer is greater if the arrest takes place during the day, if the detainee requests a lawyer and if that request is duly recorded in the detainee’s documentation. The reality is that detained suspects are not always informed about their right to legal assistance and/or the request forms they fill in are not always correctly completed (in some cases police officers try to avoid additional paperwork by instructing detainees to mark “No” in those fields pertaining to legal assistance, to medical assistance and to notification of a third party about the person’s detention). Another issue that came to light was that detainees may be held for up to a few hours without any specific charges solely based on the reasoning that “certain information exists to believe the person may have committed an offence”, which may never get disclosed to the detained person. Police officers may never even record detentions of this type and the detained person may subsequently be released without having any proof of the detention. Furthermore, in the event that the arrest is carried out during the night, and especially if the arrest takes place in a small town, it is very likely that the detainee will not be provided with a lawyer (even if one was requested and reasonable efforts were made to fulfil the request) due to a shortage of lawyers on call or due to a reluctance on the part of the lawyers to respond to such requests, which is further aggravated by the lack of consequences for lawyers if they refuse to cooperate. The lawyers interviewed as part of this research were also under the impression that detainees are likely to be questioned as witnesses at first, in the absence of an attorney.

²³ CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014*, published on 29 January 2015, para. 26, p. 22, available at: <https://rm.coe.int/16806940c4>.

²⁴ *Ibid*, para. 27, p. 22, available at: <https://rm.coe.int/16806940c4>.

²⁵ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016 (2017)*, pp. 15-16, available in Bulgarian at: http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2016_issn-2367-6930_bg.pdf.

including also the 24-hour “administrative” police detention) and **physical ill-treatment of detainees in police custody**. It also aimed to establish the dependence between the use of force by the police, access to legal assistance, ethnic origin, age and severity of the charges.

According to the survey, **71.9%**, or over two-thirds of those interviewed, reported they **did not have a lawyer** (retained or appointed) **from the very outset of the criminal proceedings** or did not have a lawyer in the criminal proceedings at all. Seventy-nine percent of the interviewees who stated that they were accused of crimes punishable with deprivation of liberty of ten years, did not benefit from legal defence from the very outset of the criminal proceedings. Fifty-six percent of the respondents declared that they had been detained during the whole duration of the criminal proceedings, whereas this percentage among Roma respondents was even higher – around 60%.

In the period October-November 2016, BHC interviewed 23 convicted prisoners and three accused persons on their experiences as suspects deprived of liberty, focusing on the implementation of the right to receive written information about defence rights.²⁶ All respondents declared that **their first interrogation by the police was conducted without the presence of a lawyer** and without receiving information on their right to remain silent prior to questioning.

2.2. Right to information

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

To strengthen protection against unlawful or arbitrary detention, to safeguard the fairness of the proceedings and to allow for an effective exercise of the rights of the defence, Directive 2012/13/EU²⁷ imposed an obligation on EU Member States to provide accessible information about applicable procedural rights in criminal proceedings by means of a written Letter of Rights to all suspects and accused persons, which are arrested or detained. However, five years after the notification of Directive 2012/13/EU, the overall assessment of the state of implementation of this

²⁶ Interviews were carried out as part of *Accessible Letters of Rights in Europe* EU co-funded project. The number of interviews conducted with convicted inmates per prison and the dates of the interviews are as follows: Bobov Dol prison – nine interviews on 7 November 2016; Parazdzhik prison – nine interviews on 9 November 2016; Plovdiv prison – five interviews on 16 November 2016; interviews with accused persons were conducted in the investigation detention facility in Haskovo on 24 October 2016.

²⁷ DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>.

obligation in Bulgaria is rather negative and discloses serious deficiencies in both domestic legislation and practice on the provision of accessible Letters of Rights.

The 2016-2017 BHC research aimed to clarify the personal scope of application of Article 4 of Directive 2012/13/EU with regard to criminal proceedings in Bulgaria; to assess the level of harmonisation between domestic legislation and practice, on the one side, and the EU requirements on the provision of written information to suspects and accused persons that are arrested or detained, on the other, as well as to analyse whether the existing Letters of Rights meet the requirements of accessibility and non-technicality.

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

Suspects

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

Accused persons

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

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

- Written information about rights is not always provided from the outset of the deprivation of liberty by the police or the other administrative authorities, competent to arrest and detain,

whereas **persons, who are not formally detained, but are obliged to remain at the police station for a “conversation”, do not receive a Letter of Rights as a rule.**

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

3. UNLAWFUL USE OF FORCE AND FIREARMS AT THE TIME OF ARREST AND DURING POLICE DETENTION

3.1. Research about unlawful use of force by the police

The CPT report from its 2014 visit²⁸ states that, *“the delegation received many allegations of deliberate physical ill-treatment of persons detained by the police (including juveniles and women), both at the time of apprehension and during questioning, consisting of slaps, punches, kicks and truncheon blows. In some isolated cases, it heard allegations of ill-treatment of such a severity that it would amount to torture, such as truncheon blows on the soles of the feet, blows with truncheons inflicted to a person attached with handcuffs to hooks fixed to a door frame (and thus immobilised in a hyperextended position) and the infliction of electric shocks using an electrical discharge weapon. In several cases, the delegation found medical evidence supporting the allegations of ill-treatment. Despite the existence of legal regulations for the recording of injuries found on persons admitted to IDFs (investigation detention facilities), it remained the case that injuries were almost never mentioned, and any description of injuries was extremely cursory. Further, medical examinations of newly-arrived detainees at the IDFs were still, as a rule, conducted in the presence of non-medical staff. There has also been no improvement in the practical implementation of safeguards against police ill-treatment. Persons in police custody are rarely put in a position to notify promptly their next-of-kin of their detention. It was also still very rare for them to benefit from the presence and the services of a lawyer during the initial period of 24 hours of police custody. Access to a doctor in emergency situations did not seem to pose a problem but there seemed to be no uniform procedure or practice for non-urgent medical care. In addition, the CPT expresses serious misgivings about the practice whereby persons detained in Sofia, were taken to the Ministry of Interior Hospital, prior to their transfer to an IDF, in order to be seen by a doctor and to be provided with a certificate confirming that they were “fit for placement” in an investigation detention facility”*.

In the report on the 2010 visit, the CPT invited the Bulgarian authorities to introduce a **uniform nationwide system for the compilation of statistical information on complaints and disciplinary and criminal proceedings and sanctions against police officers related to ill-treatment**. Unfortunately, such a nationwide uniform system had still not been put in place in 2014, as a result of which the statistical data provided to the delegation during the 2014 visit (by the Ministry of Interior and the Supreme Cassation Prosecutor’s Office) was not entirely compatible and therefore failed to enable the CPT to obtain a clear picture of the situation in the country.²⁹

The CPT also states in its *ad hoc* visit report in 2015 that the vast majority of the Committee’s long-standing recommendations, some of them dating back to the very first periodic visit to Bulgaria in 1995, remained unimplemented. These included recommendations on ill-treatment (both in the police and prison context). The Committee again concluded that men and women (including juveniles) in the custody of the police continue to run a significant risk of being ill-treated, both at the

²⁸ CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014*, published on 29 January 2015, available at: <https://rm.coe.int/16806940c4>.

²⁹ *Ibid*, p. 17.

time of apprehension and during subsequent questioning. It added that, “*very little progress, if any, has been made as regards guaranteeing the practical implementation of the legal safeguards against police ill-treatment. The vast majority of persons interviewed by the delegation stated that they had not received information about their rights after being detained by the police, had not been able to notify a third party of their custody and had not benefited from the presence and the services of a lawyer from the very outset of their deprivation of liberty. Furthermore, the delegation received a number of allegations that medical examination of persons in police custody was limited to a few general questions; no physical inspection took place, the injuries were usually not recorded and the examination itself was often performed in the presence of police officers, with detainees usually being handcuffed*”.³⁰

In the course of its 84th plenary meeting in July 2014, the CPT decided to set in motion the procedure provided for in Article 10(2) of the Convention.³¹ In its **public statement** the CPT expressed concern about the lack of decisive action in implementation of legislation and as regards the treatment of persons detained by law enforcement agencies, it recommended resolute action **“to ensure the practical and meaningful operation of fundamental safeguards against ill-treatment (including the notification of custody, access to a lawyer, access to a doctor, and information on rights)”**.³² The next CPT visit is expected in 2017.

Since 2002, BHC has conducted **surveys among newly-arrived prisoners** in four prisons of Bulgaria to inquire about the conditions of pre-trial detention, police brutality and access to justice. The survey is not representative of the prison system as a whole, but gives a fair impression of the trends over the past several years. Among the questions asked are some related to the use of force by police during arrest and inside the police station. In January 2015, BHC researchers interviewed inmates at the Vratsa, Pazardzhik, Lovech and Stara Zagora prisons whose pre-trial proceedings were initiated after 1 January 2013 on the use of force during their detention by the police and their subsequent transfer to police precincts.³³ The table below presents the percentage of detainees (all of whom were interviewed when already in prison) who were victims of the use of unlawful force by police against them at the time of arrest and inside the police station over the five-year period:

	2010	2011	2012	2013	2014
At the time of arrest	26.2%	27.1%	24.6%	22.0%	23.0%
Inside the police station	17.4%	25.5%	18.0%	23.30%	22.4%

³⁰ CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015*, p. 4, available at: <https://rm.coe.int/16806940c7>.

³¹ *Ibid*, p. 4.

³² CPT, Public Statement concerning Bulgaria, 26 March 2015, <https://rm.coe.int/16806940ef>

³³ They replied to the questions whether they were victims of unlawful use of force by the police. The data from the four studies are presented in the table below in the last column. The other columns refer to previous studies in the same prisons with prison inmates who were detained around 2 years before the interviews – thus the data for 2013 refers to police detention that took place in 2011, 2012 data refers to detention that took place in 2010, etc.

Compared to 2013, the latest data does not reveal any positive change in the complaints regarding the use of force by police officers during detention and inside the police station, where it is completely unacceptable. As a whole, the number of complaints in both cases are very high. According to the data presented in the table, **well over 1/3 of detainees who were subsequently sentenced to effective imprisonment were ill-treated either at the time of arrest or afterwards, or in both cases**. Some cases involve inflicting severe pain with the purpose of coercing information or for punishment, i.e. torture.³⁴

One of the main objectives of the 2016-2017 BHC survey³⁵ carried out among 1,357 convicted prisoners in all prisons between November 2016 and February 2017 was to establish the scale of the **use of physical force by police officers against inmates at the time of arrest and during the subsequent detention**. According to the survey findings, **every third person (34%)** surveyed reported being **physically ill-treated** either upon police arrest or in police custody (the 2015 survey estimates this share at 32.8%).³⁶ Those claiming use of physical force **inside police custody were more (24%)** than those who reported violence **upon arrest (19.4%)**. These shares are bigger compared to the 2015 survey, in the first case – by 2%, and in the second – by 4%.³⁷ The number of inmates claiming physical ill-treatment at investigation detention facilities is significantly lower - 6.2% of those who have been detained at such facilities (however, this share is higher by 2% compared to 2015).³⁸ In general, the 2016 survey does not reveal any positive dynamics in the trends and even estimated a slight increase of the use of unlawful physical force.

The share of **Roma (28.3%)** who reported being victims of physical violence by the police in 2016 is **twice as high** as that of the Bulgarians (14.5%). The survey's findings suggest also that juveniles are particularly vulnerable to police brutality – 66.6% of all juveniles interviewed report being physically abused during police custody.³⁹ The share of Roma who reported being victims of physical violence in 2015 was by some 10% higher than that of Bulgarians and by some 11% higher than that of Turks.⁴⁰

The 2016 survey established a **clear dependence** between the access to **legal assistance** during pre-trial proceedings and the **use of force by police officers**. Those respondents who did not have a lawyer from the outset of the pre-trial proceedings or did not have a lawyer throughout the entire period report being victims of physical ill-treatment by the police at the time of the arrest and inside the police **twice as often** as those who did have a lawyer from the outset of the criminal proceedings.⁴¹ In 2015 overall, 34% of those interviewed reported that their access to legal assistance had been restricted or completely absent during the pre-trial proceedings. Of these, 6.1% claimed that they had not had a lawyer all the time. Respondents who did not have a lawyer and were subjected to physical violence were by 13.3% more than those who were subjected to physical violence but did have a lawyer.⁴²

³⁴ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2014* (2015), p. 6.

³⁵ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), pp. 15-16.

³⁶ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2015* (2016), p. 10.

³⁷ *Ibid*, p. 10.

³⁸ *Ibid*, p. 10.

³⁹ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), pp. 15-16.

⁴⁰ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2015* (2016), p. 10.

⁴¹ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), pp. 15-16.

⁴² Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2015* (2016), p. 10.

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

In April 2016, BHC sent an information request about the unlawful use of force and firearms in police stations to the Ministry of Interior. According to the reply from June 2016, the Ministry did not keep information of the **unlawful** use of force and auxiliary means in police stations under the newly-adopted *Ordinance* and that this information should be provided by the regional police departments. The request was sent to inquire how the new *Ordinance 8121z-1130* of 14 September 2015 about the *Order of Use of Force and Auxiliary Means by the Officers of Ministry of Interior (НАРЕДБА № 8121з-1130 от 14 септември 2015 г. за реда за употреба на физическа сила и помощни средства от органите на Министерството на вътрешните работи)*⁴³ was implemented during the period 14 September 2015 - 15 May 2016. Article 5 of the *Ordinance* provides that **in each case of use of physical force and auxiliary means** the officer who used them is obliged to report in writing on: his own name and position; place, date and time of this use; reason and circumstances; intensity of the use; identity of persons against whom it was used; measures taken against these persons; visible evidence of the use. Article 1 of the *Ordinance* provides that the use of force and auxiliary means are allowed under Article 85, paras. 1 and 2 of the *Ministry of Interior Act*. The presumption therefore was that the Ministry of Interior would check the registration of all cases of use of force and auxiliary means in their data base of written reports and would reply about the unlawful ones. However, **the Ministry replied that it does not collect such information. The Regional Departments, to which the Ministry of Interior forwarded the BHC request, supplied information only about cases in which they received signals/complaints and not about the registration of all cases of unlawful use of force and auxiliary means under the newly-adopted Ordinance (see Annex 1 at the end of the report).**

In its letter from 28 April 2016, the Ministry of Interior replied that in 2015 organisation for exam checks of the theoretic knowledge of police officers (for their personal protection and tactical training) was created and by these exams the level of knowledge of the legislation including for detention and use of force, arms, auxiliary means was checked also. In everyday work legislation related to detention is being reminded to the officers; each case of use of force and auxiliary means is reported; each case of unlawful use of force and auxiliary means is thoroughly investigated and persons found guilty are punished.⁴⁴

According to the *Concluding Provisions* of the *Ordinance*, para. 3, “the Ministry of Interior Academy and the Management of Property and Social Activities Department at the Ministry of Interior should elaborate **methodological guidelines** on the use of different types of techniques for use of physical force and auxiliary means, technical characteristics, safety rules in use and storage of these means within three months after the enforcement of the *Ordinance*”. Asked about the guidelines that had

⁴³ Bulgaria, Ministry of Interior, *Ordinance 8121z-1130* of 14 September 2015 about the order of use of force and auxiliary means by the officers of Ministry of Interior (НАРЕДБА № 8121з-1130 от 14 септември 2015 г. за реда за употреба на физическа сила и помощни средства от органите на Министерството на вътрешните работи), available in Bulgarian at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=97494>.

⁴⁴ Bulgaria, Ministry of Interior, Letter 812100- 10907/28 April 2016.

to be elaborated by the end of 2015, the Ministry of Interior replied that as of June 2016 the guidelines were still in process of elaboration.⁴⁵

According to para. 5 of the *Concluding Provisions of the Ordinance*, the Ministry of Interior Academy and the Human Resources Department organise **trainings on the use of force and auxiliary means by police officers**. The Ministry of Interior reported that during the researched period 90 police officers were trained in personal protection. Introduction training, including on the use of force and auxiliary means, was performed in three cities with 754 officers, and a training in professional skills, again including the use of force and auxiliary means, for 265 officers was organised. Another training for work in multiethnic environment was performed by the Mol Academy for 210 officers, who trained another 2,480 officers at their respective workplace.⁴⁶

Three District Police Departments provided information on the organised trainings. The **Kurdzhali District Police Department** replied that they had provided training to 279 police officers on the implementation of the *Ordinance*, and that the officers were trained on the use of force, handcuffs and arms in their regular trainings of two-hour duration. The **Sofia District Police Department** replied that trainings are planned to be implemented after the adoption of methodological guidelines and by July 2015 police officers took theoretical and practical exams that aimed to check the level of their knowledge in legislation and rules for the use of force and arms. The **Plovdiv District Police Department** replied that trainings on use of force and arms covering an average of 27 topics are regularly implemented; the total of organized trainings was 405 and the number of participating police officers - 1,146.

The Ministry of Interior elaborated a form for NGOs for the purposes of conducting monitoring in police stations, but as of June 2016 no such **agreements with NGOs** had been signed.⁴⁷

3.3. Unlawful use of force against juveniles in police detention

BHC monitoring carried out in 2014 established that adolescents placed in reformatory institutions testified about the use of force against them in police detention.⁴⁸ **Around 51% claimed that they had been subjected to mental and physical abuse during interrogation, including racist insults, threats of ill-treatment and even death.** An adolescent detained in the Radnevo Police Station testified that he had been hit with a wooden club on the back and arms and threatened to have his fingers cut off with an axe during interrogation. There were also a significant number of cases, in which children testified that they had been coerced into making confessions for acts they did not commit. Thus, an adolescent detained at the Montana Police Station was reportedly beaten with a cable and an electric truncheon. An adolescent detained at the Sliven Police Station was reportedly hit with a truncheon and had his ears pulled with tongs. The abuse against adolescents takes place until they are coerced into confessing testimony; attempts to complain about the abuse committed against them were unsuccessful. What is more, detainees are not provided with medical assistance after being subjected to physical abuse. In some cases the scars from the ill-treatment remain for a long period after the abuse itself, which in others the adolescents suffer serious medical issues. Thus,

⁴⁵ Bulgaria, Ministry of Interior, Letter 812100-14339/9 June 2016.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2014* (2015), p. 8.

an adolescent detained at the Nova Zagora Police Station developed hernia after being beaten with truncheons; he had to undergo surgery as a result. A boy detained in the Varna Police Station was subjected to a severe beating with gloves in the area of the kidneys and blows to the back and feet with a truncheon. As a result he had difficulty walking and continues to experience difficulty while urinating. Some of the children reported that other people were present at the time of committing the abuse, like, for instance inspectors from the Juvenile Pedagogic Units, who remained impassive. BHC teams witnessed the attitude of an officer from the 3rd Sofia Police Station to adolescents detained in this station. Asked to identify their profile, the officer stated “some moron”. When asked about the type of measures that are enforced when detained adolescents fail to observe the established order, the same officer replied: “I’ll tie him up like a monkey”.⁴⁹

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

In 2014, the European Court of Human Rights (ECtHR) established one violation of Article 2 of the European Convention on Human Rights (ECHR) (right to life) and a number of violations of Article 3 (freedom from torture, inhuman or degrading treatment) in cases against Bulgaria. In *Dimitrov and Others v. Bulgaria* of 1 July 2014 (application no. 77938/11), the Court found a violation of Articles 2 and 3 of the Convention. The application was filed by the relatives of the deceased Angel ‘Chorata’ Dimitrov in connection with his death, which occurred during police detention in a raid carried out by a regional organised crime unit on 10 November 2005. ECtHR held that facts accepted as proven in the case indicate that Mr Dimitrov was ill-treated by civil servants and ruled a violation of Article 3 of the Convention. ECtHR decided that the case should be reviewed in the light of Article 2 of the Convention, regardless of the fact that the exact cause of Mr Dimitrov’s death and the existence of a direct causal relation between the force used against him and his death were being contested. The Court also held that the responsibility of the state under Article 2 may be invoked even when the authorities, while conducting a raid, have not taken all possible measures to avoid or limit the risk of accidental loss of human life. The Court decided that the criminal proceedings did not result in establishing all circumstances related to clarifying the responsibility of the individuals who had caused the victim’s death. It expressed concern with regard to the lack of investigation of the more general picture and with regard to possible attempts on behalf of those involved to cover the incident. The Court recommended a single procedure on the establishment of civil servants’ responsibility in such situations, in order to maintain public trust in justice and refute doubts that the police had wanted the physical elimination of the victim. The Court awarded EUR 50,000 in non-pecuniary damages, a total of EUR 17,000 in respect of costs and expenses incurred in the domestic proceedings, and EUR 3,681 and BGN 130 (EUR 65) in respect of costs and expenses incurred in the ECtHR proceedings.

In the case of *Anzhelo Georgiev and Others v. Bulgaria* of 30 September 2014 (application no. 51284/09), ECtHR held a violation of the substantive and the procedural aspects of Article 3 of the Convention due to the use of excessive force by police officers during a police raid of an Internet service provider on 18 June 2008. The application was submitted by company employees who claimed that during the raid police officers forced them to lie on the ground and then hit and kicked

⁴⁹ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2014* (2015), p. 8.

them and even used electroshock batons against some of them. The Court decided that the preliminary investigation had not established the exact circumstances of the incident, the reasons for the use of force by the officers, the degree and the type of the injuries inflicted on the applicants, and that no convincing arguments had been submitted to justify the force used. The Court awarded each of the three applicants EUR 2,500 in non-pecuniary damages.

In ***Stoev and Others v. Bulgaria*** of 11 March 2014 (application no. 41717/09), ECtHR held a procedural violation of Article 3 due to the fact that the Bulgarian authorities had not conducted an effective investigation of a case of battery, threat of murder and robbery of the applicants on 5 December 2000 at an artificial lake at the village of Asparukhovo, near Karnobat. The Court established that the treatment of the applicants was sufficiently severe to fall within the scope of Article 3 of the Convention, and that the authorities had had the obligation to carry out a comprehensive and effective investigation of applicants' claims. ECtHR held that despite the fact that the Bulgarian authorities had initiated criminal proceedings and had carried out certain investigative actions, the duration of the criminal proceedings – more than ten years – is a cause of concern. The authorities had not demonstrated diligence and had not done anything to identify the persons responsible or to find a missing key witness, despite the applicants' requests. Although two of the alleged perpetrators had been identified, the investigation was against an unknown person the whole time. This, as well as the fact that the investigation had been suspended on multiple occasions, allowed it to be terminated in 2011 when the statute of limitations expired. The Court awarded a total of EUR 11,000 in non-pecuniary damages and EUR 1,128 in respect of costs and expenses.⁵⁰

In 2015, ECtHR found violations of Article 2 and Article 3 of ECHR in a number of cases involving police violence.⁵¹ These include ***Mihaylova and Malinova v. Bulgaria*** of 24 February 2015 (violation of Article 2 in the case of a Romani man shot dead by police officers); ***Petkov and Parnarov v. Bulgaria*** of 19 May 2015 (violation of Article 3 with regard to the beating of two young men by police officers); ***Stoykov v. Bulgaria*** of 6 October 2015 (violation of Article 3 on account of the ill-treatment of a detainee by the police); ***Myumyun v. Bulgaria*** of 3 November 2015 (violation of Article 3 on account of the battery of the applicant by police officers).⁵²

In 2016, ECtHR delivered several judgements against Bulgaria referring to the prohibition on torture and inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights.⁵³ In several of the cases, the Court established other violations of the Convention.

The Court delivered its judgement in the case of ***Boris Kostadinov v. Bulgaria*** (application no. 61701/11) on 21 January 2016 concerning the applicant's detention by the police during the first Gay Pride event, which took place in Bulgaria in 2008. Although the applicant alleged that he had been with a group of friends with no intention of attacking anyone, in reality he was with a group of about 70 people who intended to attack participants in the event. The group was intercepted by the police who stormed out of their cars and ordered everyone to lie on the ground and throw away their bottles. Mr Kostadinov alleged that police officers forced everyone to lie on the ground, hit them with truncheons, and kicked them. The applicant also lay on the ground handcuffed, he was kicked

⁵⁰ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2014* (2015), pp. 9-10.

⁵¹ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2015* (2016), pp. 10-11.

⁵² *Ibid*, pp. 10-11.

⁵³ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), pp. 21-23.

and hit with truncheons and punched on the back, shoulders and legs. The group were left lying on the ground for 30 minutes in front of passers-by, with journalists taking photos. Photos were also taken by the Ministry of Interior. The applicant, together with 25-30 other people, were taken by van to the nearby police station. He was searched, but no dangerous objects were found in his possession. He was then left standing for a period of two hours and forced to face a wall with his hands raised and legs apart. During this time, police officers occasionally walked behind him and kicked him in the back of his knees. Next, he was placed in a cell of about 10 sq.m. shared with 32 other individuals. He was not given any water or food or allowed to use the toilet. Mr Kostadinov was questioned for about 20 minutes and allegedly not allowed to contact an attorney, medical doctor or family member, despite declaring his wish to do so. He was released the following day, about 11 hours after being detained. The following day, the applicant acquired a medical certificate, which described his injuries. Later, Mr Kostadinov received a penalty due to disobeying a police order, with no further charges pressed against him. The Military Prosecutor's offices rejected his request to open criminal proceedings on the grounds that the use of force and auxiliary means is justified by the *Ministry of Interior Act* in its pre-2012 provisions in situations where these are applied to prevent attacks against citizens or the police. The Court found a violation of Article 3 in its material aspect due to the **ill-treatment of the applicant at the police station** as well as a violation of Article 3 in its procedural aspect due to the **lack of effective investigation of police violence** against the applicant.

ECtHR found a violation of Article 3 in the case of *Govedarski v. Bulgaria* (application no. 34957/12) from 16 February 2016 filed by four applicants, a family, due to the first applicant's **detention by the police conducted at dawn in his home and in the presence of his wife and two young children**, also applicants in this case. Masked and heavily armed police officers burst into the house and later forced the applicant to stay without underwear for over an hour in order to confess that he was a 'usurer'. Several hours into the operation, during which the police officers searched the house, Mr Govedarski was handcuffed and taken outside where people had already gathered. The search inside Mr Govedarski's home was conducted without prior approval by a judge. Following the showy arrest, Mr Govedarski reported panic attacks, sleep deprivation and depression as well as the distancing of his financial partners from him. During the arrest, Mrs Govedarska became unconscious, suffered a hypertensive crisis, and later experienced sleep deprivation and depression. The family's two sons, also applicants in this case, were crying with fear throughout the arrest operation. The older boy started suffering from urinary incontinence and poor concentration, and became aggressive. The younger child started experiencing constant fear. The Court found that the **manner in which the arrest and house search had been conducted subjected the applicants to degrading treatment, and that the police operation at the house had not been planned or conducted in a way, which would have guaranteed that all used means were absolutely necessary to achieving its ultimate objectives**. The applicants had been subjected to a psychological ordeal, which had aroused strong feelings of fear, anxiety and powerlessness. The Court further found a violation of Article 8 due to the manner in which the house search was conducted which constituted unjustified interference with the applicants' right to respect for their home and family life. A violation of Article 13 was identified due to the lack of effective domestic remedy to ensure protection against the above violations.

Another court judgement addressing police arbitrariness is *Petrov and Ivanova v. Bulgaria* (application no. 45773/10) from 31 March 2016. It is based on Ms Ivanova's allegations that during her pregnancy at the time of the events, she had been subjected to inhuman and degrading treatment when the police authorities entered her home to conduct the showy arrest of Anton

Petrov, part of two police operations nicknamed “Shameless” and “Octopus”. Mr Petrov complained that a number of politicians and public prosecutors had breached his right to be presumed innocent. The police operation was widely covered by the media and articles identified the applicant by name or nickname as leader and treasurer of the criminal group. On the day following the arrest, the then Minister of Interior declared with certainty that Mr Petrov had performed the unlawful actions, which had necessitated his detention. The Court found that the applicant Ms Ivanova had been subjected to a **psychological ordeal, which had aroused strong feelings of fear, anxiety and powerlessness in violation of Article 3 of ECHR**. Regarding the Interior Minister’s comments, the Court found that the presumption of innocence under Article 6 § 2 of ECHR had been violated. The Court observed that the applicants’ claim of a violation of their right to respect for private and family life due to the video recording of their home during the police operation is clearly ungrounded. The Court concluded that the applicants had had no domestic remedy (Article 13) in order to assert their relevant rights under Article 3 and Article 6 § 2 of the Convention.

The case of *Stoyanov and Others v. Bulgaria* (application no. 55388/10) from 31 March 2016 refers to the same police operation widely covered by the media, which lead to serious violations of the rights of the affected. The applicants in this case are 10 individuals – two brothers and their relatives – and 10 legal persons controlled or headed by the brothers. On 10 February 2010, an operation referred to as “Octopus” was launched with the aim to break down groups specialised in prostitution, extortion, embezzlement of public funds, racketeering, tax fraud and money laundering. At dawn, a police team burst into the homes of the Stoyanov brothers where two minors and other individuals were also present. The brothers were detained and released several days later. In 2014, the domestic court closed the case finding that it had remained at the preliminary investigation stage too long. In this situation again, the Interior Minister gave statements to the press soon after the operation confirming that the accused were guilty. Soon after their detention, a procedure was initiated to confiscate the brothers’ property in favour of the state. This procedure was also discontinued several years later. ECtHR has found violations of Article 3, Article 6 § 2 and Article 13 of the Convention.

The case of *Popovi v. Bulgaria* (application no. 39651/11) from 9 June 2016 concerns the arrest of Mr Popov while he was at the his wife’s (who is the second applicant in the case) notary office. The arrest was carried out by a team of hooded officers from the National Service for Combating Organized Crime (‘NSBOP’) who burst into the premises. The actions of the officers were recorded by the security cameras at the notary office. NSBOP officers were also accompanied by an individual with a camera, who filmed the arrest. The first applicant alleged that he was hit on the head as a result of which he lost consciousness, and when he refused to kneel in front of the camera, he was slapped in the face. The video recording was sent to the media, which then aired it. Following the institution of criminal proceedings against Mr Popov, the Committee for Confiscation of Unlawfully Acquired Property initiated a procedure to confiscate the property of the applicants and imposed preventive measures to secure their bank accounts, real estate and vehicles. Subsequently, Mr Popov was acquitted on all pressed charges. The Court found that the applicant had been subjected to **degrading treatment by the police officials during the arrest in violation of Article 3 of the Convention as well as that the investigation of the circumstances of his arrest and injuries had not been diligent**. Regarding the statements by the Minister of Interior at the time, the Court found that the presumption of innocence was infringed (Article 6 § 2). The Court found a violation of Article 8 due to the search and seizure carried out at the notary’s office without judicial control and because Mr Popov’s arrest had been video recorded and released to the media. In view of these violations,

the Court found that the applicants did not have any effective domestic remedy for legal protection, which constitutes a violation of Article 13 of the Convention. In view of the complaint against the preventive measures imposed randomly, the Court decided that the domestic remedies had not been exhausted. Hence, the complaint was dismissed.

4. HATE CRIMES – NUMBER OF CASES, TENDENCIES

As a whole, in the period under review and particularly over the past three years (2014-2016) there has been a marked deterioration in the implementation of international standards related to addressing the **climate of rising discriminatory and hate speech** and crimes in Bulgaria. This is due to a combination of factors, the most prominent of which is the **growing influence wielded by several ultranationalist political parties of a neo-totalitarian type**. At present, these such parties united in the coalition “United Patriots” are formally a coalition partner of the current government. Other factors include the **worsening of the media climate and the lack of reform of the judiciary** and of the law enforcement institutions in general. The positive developments, which took place in the period under review, concerned for the most part **transposition of the EU law related to the prosecution of public incitement to hatred, discrimination and violence on national, racial, ethnic and religious grounds**. The enforcement of these provisions however remain a serious concern, as do the execution of the judgments against Bulgaria of the European Court of Human Rights in general and especially on issues relating to ethnic and religious minorities.

The Bulgarian government submitted a report on the implementation of the obligations under the *UN Convention of Elimination of All Forms of Racial Discrimination* in 2016 and the country’s review by the UN Committee on the Elimination of All Forms of Racial Discrimination took place in April 2017. For the purpose of the review the government presented figures about the number of cases initiated under the provisions regulating hate crimes of the *Criminal Code* during the period 2008-2014 (see Annex 2 at the end of the report).⁵⁴ **The figures show that these provisions are very rarely applied – from 0 to a maximum of 16 times a year and that from 0 to 3 persons are sentenced for hate crimes a year.**

⁵⁴ Bulgarian Government, *Report about the Implementation of the Obligations under UN Convention on Elimination of All forms of Racial Discrimination*, Annex 3, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fADR%2fBGR%2f22749&Lang=en.

5. IMPUNITY – INVESTIGATION OF POLICE VIOLENCE AND HATE CRIMES

5.1. Impunity for police violence cases

In 2015, the Bulgarian Helsinki Committee carried out a **research on the number and outcomes of the police ill-treatment cases** during the period 2000-2015.⁵⁵ As in 2015 still no nationwide system for the compilation of statistical information had been put in place, information about these complaints/disciplinary/criminal proceedings was requested from the courts and the Ministry of Interior. According to the **courts** that replied to the special request (42 total out of 144 polled), there were **212 cases** of ill-treatment for the period 2000-2015 (the military court replies referred to the period 2000-2008, while the civilian court replies referred to the period 2009-2015). At the same time, according to the Ministry of Interior, there were **1,146 complaints** (for the period 2000-2015) and cases (both criminal and disciplinary) initiated, out of which 475 were for unlawful detention, 483 for bodily injury, and 188 for forced interrogation.⁵⁶

According to the courts that replied,⁵⁷ at least **172 of the 212 cases concerned “light bodily injury”** and the outcome was that **101 fines were imposed and 28 police officers were sentenced to conditional imprisonment (suspended sentence “deprivation of liberty”)**, probably for moderate or severe bodily injury and unlawful detention (the replies do not specify this).

According to the Ministry of Interior, 138 criminal proceedings against police officers were initiated, of which **40 were for “light bodily injury” and four - for ill-treatment during interrogation (Article 143 of Criminal Code); 93 pre-trial criminal proceedings were terminated and one was stopped.** As a result of the criminal proceedings, **according to the Ministry of Interior 48 officers were sanctioned with fines and 11 - with suspended sentences “deprivation of liberty”.**

According to the Ministry of Interior out of all 1,146 complaints, **97 complaints against unlawful detention were found unreasoned, 158 complaints against bodily injury were found unreasoned and 45 complaints against forced interrogation were found unreasoned (300 altogether).**⁵⁸ **Out of the other 846** internal investigations carried out by the directors of police departments the sanctions imposed on police officers were: **three officers were reprimanded, 18 received a written warning, 75 were sanctioned with written warnings for dismissal, seven were prohibited from applying for a**

⁵⁵ Bulgarian Helsinki Committee, *The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons* (2017), pp. 10-11.

⁵⁶ Bulgaria, Ministry of Interior, Written reply 812100-38855/26.11.2015 signed by Zlatko Todorov.

⁵⁷ 42 courts that replied (out of 144 polled) to the information request (four of those 42 are military courts - three still operating and one closed - responded for the period 2000-2009 and 38 are civil courts and responded for the period 2009-2015).

⁵⁸ Bulgaria, Ministry of Interior, Written reply 812100-38855/26.11.2015 signed by Zlatko Todorov.

job promotion and 18 were dismissed (121 altogether).⁵⁹ The Ministry of Interior did not provide information about the other 725 cases.

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

Practice on prosecution by the complainant

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

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

The first finding of the BHC research is that the Ministry of Interior and the courts work with **different information/statistics**, as the statistics of the MoI report significantly lower numbers of initiated criminal proceedings. This poses the problem of the outcome of the disciplinary proceedings based on the outcome of the criminal proceeding. The second conclusion is that the **criminal proceedings end with low punishments** – fines and suspended terms of deprivation of liberty. The third conclusion is that **effective mechanism for protection of the victims of police violence is lacking**, as the statistics is lacking, the success rate of the cases is low and the punishments are light.⁶⁰

⁵⁹ *Ibid.*

⁶⁰ Bulgarian Helsinki Committee, *The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons* (2017), pp. 10-11.

5.2. Impunity for hate crimes

Public incitement to hatred, discrimination and violence in Bulgaria have become a particularly serious problem over the period 2012-2017. Most victims of such crimes include Roma, Muslims and migrants. This goes by and large unpunished.⁶¹ **The statistics presented by the government show very low conviction rates (see Annex 2).** Importantly, there is no indication in how many cases the convicted persons belong to ethnic minorities, as Articles 162 and 164 of the *Criminal Code* have been vigorously enforced against persons belonging to such groups, but rarely against members of the majority and never against politicians who have been particularly virulent instigators.

In 2016, BHC sought information from the Council for Electronic Media (CEM), the body overseeing the work of the radio and the TV broadcasting operators in Bulgaria, on the number of **sanctions it imposed on them over the past five years for public incitement of hatred.** Article 10(1)(6) of the *Radio and Television Act* prohibits broadcasts “inciting hatred on the grounds of race, sex, religion and nationality”. On 21 March 2017, CEM provided the requested information. It appears that since January 2012 it had sanctioned with fines **only two TV operators:** on 10 November 2015 it sanctioned Evrokom TV with BGN 3,000 (EUR 1,500) for inciting hatred against Roma in the program PSYCHO-dispanser,⁶² and on 15 December 2015 it sanctioned SKAT TV with BGN 3,000 (EUR 1,500) for inciting hatred against Roma in a report entitled “Bourgas – the city of Gypsy lawlessness and burqas?!”⁶³ In both cases the fines are at the minimal threshold envisaged by law and could hardly have and, given the subsequent behavior of both TV operators, did not have any dissuasive effect. No sanction was ever imposed on the Alfa TV of the Ataka party and not one sanction was imposed in 2016 when racist hate speech reached unprecedented proportions. Compared to the scale of the racist hate speech spread in the abovementioned, as well as in several other media, the CEM attitude can fairly be described as a complicity to the impunity, which public incitement to hatred, discrimination and violence enjoys in the Bulgarian media.

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

Since the autumn of 2013, when the first increase in the number of asylum seekers was observed, several political parties and media contributed actively to the creation of a hostile and threatening environment for refugees and asylum seekers. In addition, as was the case during previous years, Roma and Muslims continued to be portrayed as anti-social and anti-national elements in the public speeches of party leaders. This was widespread on several cable TV channels, including SKAT TV, Alfa TV and Evrokom TV, as well as in some tabloid newspapers with wide circulation, such as *Weekend, Retro, Telegraph, Monitor* and *Pensioneri*. In 2013, **the leaders of the Ataka party** were particularly active in instigating hatred, discrimination and violence **towards refugees.** Through media owned by

⁶¹ ECtHR judgment in the case of *Karahmed v. Bulgaria* (no. 30587/13, judgement of 24 February 2015) involving an Ataka mob attack on Sofia’s Banya Bashi mosque on 20 May 2011 deals with a typical example of the impunity, which perpetrators of hate speech and hate crimes enjoy.

⁶² PSYCHO-dispanser was a virulently racist program of the Evrokom TV in the period 2013-2016 targeting Roma, migrants and Muslims.

⁶³ CEM, Decision No. RD-05-37 of 21 March 2017.

the party – the *Ataka* newspaper and the Alfa TV – party leaders presented the Syrian refugees as a threat to national security, calling them “cannibals”, “mass killers”, “Islamic fundamentalists running from justice” and “lying to the authorities”, “disgusting lowlife primates running from Syrian justice” who “have begun to steal, to assault” in Bulgaria and will begin “to rape and cut off heads”. In connection with this, BHC represented a group of individuals of Syrian origin residing in Bulgaria in a complaint before the Commission for Protection against Discrimination (CPD) against the MP Magdalena Tasheva and the *Ataka* political party as the owner of the media. The Commission offered **partial relief to only one of the applicants, but its decision was overturned by the Sofia Administrative Court thus leaving this virulent public incitement unpunished.** In early November 2013, Angel Djambazki, one of the leaders of VMRO party, at a rally in Sofia called on citizens to get organised and armed in order to “cleanse” the city of illegal immigrants. The Djambazki appeal was followed by a series of assaults by hate groups on foreigners in Sofia.⁶⁴ **Upon a BHC alert to the Prosecutor General, the prosecutor’s office initiated pre-trial proceedings, but they were subsequently discontinued.**

In advance of the October 2014 parliamentary elections, ultra-nationalist political parties used virulent anti-minority rhetoric in both their public speeches and in their platforms. This continued also after the elections. On 7 December 2014, the **health minister Petar Moskov** (of the Reformist Bloc coalition partner) made a **statement about attacks against medical emergency teams in Roma neighbourhoods**, which was widely publicised. The minister announced on Facebook his intention to have the medical emergency teams stop responding to emergency calls from Roma neighbourhoods.⁶⁵ Minister Moskov’s racist threat spurred a storm of indignation among the Roma community and rights activists. Several organisations and individuals appealed to the prosecution, insisting that it hold the minister responsible for instigating racial hatred and discrimination. **At the end of February 2015, the Sofia City Prosecutor’s Office refused to initiate criminal proceedings, accepting that Moskov’s actions did not constitute targeted and deliberate instigation of racial discrimination, violence or hatred based on race, nationality or ethnic origin.**

Rights activists defending marginalised minority groups and migrants also became victims of hate speech in 2014. Such speech was especially widespread on the Internet and in social media. The main themes articulated by such speech are that the non-governmental organisations are working against the interests of Bulgaria (being labelled “anti-Bulgarian”); that they are “financed from abroad” and are therefore “foreign agents”. On 12 September 2014, as part of its election campaign, the Bulgarian National Union – New Democracy (BNS-ND), a small ultranationalist political party, and the Movement for the Protection of the Fatherland, a Facebook group, organised a protest rally in front of the BHC office under the motto “Let’s ban the BHC”. The rally was attended by some 50 individuals who shouted racist insults, threats to the life of the staff, called the neighbours in the residential building, which houses the BHC offices, to banish its staff from the offices and raised and

⁶⁴ For a short account of these assaults see: Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2013* (2014).

⁶⁵ The minister stated: “If someone chooses to live and act like an animal, they also receive the right to be treated as such. Even wild animals understand when you are trying to help them and wouldn’t attack you... As of tomorrow, [medical emergency] teams will enter locations where such incidents have occurred only if an agreement is reached with the local community’s “opinion leaders” to personalise the responsibility of the said population, or accompanied by police teams. When possible and as possible. I will issue a special order relieving the regional centres and the teams of the responsibility for these decisions”.

disseminated posters with such calls. All this happened in front of police officers present at the rally. **The prosecution was informed about the threats heard during the rally. It initiated an investigation against an “unknown perpetrator”, which was later stopped for allegedly failing to identify the perpetrators. This is despite the fact that BHC submitted video evidence and witness statements, which clearly identified several of the perpetrators and organisers of the protest.**

2016 brought about a **drastic deterioration in the situation with respect to public instigation to hatred**, discrimination and violence towards ethnic and religious minorities, as well as towards human rights defenders and other organised anti-racist activists. In July 2016, the Open Society Institute published a **survey on the experience of ordinary people with hate speech**. The survey showed a sharp increase in public hate speech compared to 2014. Thus, the share of the respondents who said that they have heard hate speech in general increased by 11% compared to 2014. **In 92% of the cases the hate speech was addressed towards Roma. At the same time hate speech towards Muslims increased more than three times (from 11% to 38%), whereas hate speech towards the Turks increased by 19%. Since 2013 hate speech towards foreigners increased more than four times (from 5% to 21%).**⁶⁶ Several other organisations also reported sharp increases in public hate speech in 2016.⁶⁷ In a statement made in October 2016, John Dalhuisen, Amnesty International’s Director for Europe, stated: “The Bulgarian authorities have not only failed to counter the climate of intolerance, but have actively engaged in inflammatory speech and at times openly encouraged violence”.⁶⁸

During 2016 **numerous protests and demonstrations** took place targeting mainly **refugees or Roma**, in which hate speech often overflowed into direct calls to violence.⁶⁹ In May, a traffic accident between two drivers in the town of Radnevo ended with the violent beating of passengers from one of the vehicles. It turned out that the attackers were of Roma origin. For several days protests by local citizens organised by hate groups took place in front of the local Roma neighbourhood known as ‘Cantona’. All inhabitants escaped and were absent from the city for several days. The protesters shouted “Bulgaria for the Bulgarians!” and “Gypsies into soap!”. A Facebook group called “Truth for Radnevo” posted videos with Hitler and the members of the neo-Nazi network “Blood and Honour” actively participated in the protest. **This public incitement to hatred and violence did not give the competent authorities sufficient ground for prosecutions.**

⁶⁶ The results of the survey are accessible at the Open Society Institute web site: http://osi.bg/?cy=10&lang=1&program=1&action=2&news_id=716.

⁶⁷ Amnesty International, *Annual Report 2016*, London (2016), available at: www.amnesty.org; Media Democracy Foundation, Foundation Centre for Modern Policies, *Hate speech in Bulgaria: Risk zones, vulnerable subjects*, Sofia (2016), available at: <http://www.fmd.bg/?p=9356>. In the latter publication there is a detailed description of the types, the sources and the effects of the racist hate speech.

⁶⁸ Amnesty International, *Response to assault on chair of Bulgarian Helsinki Committee*, 27 October 2016, available at: <https://www.amnesty.nl/actueel/response-to-assault-on-chair-of-bulgarian-helsinki-committee>.

⁶⁹ In September, residents of the Ovcha Kupel district in Sofia organised a protest demanding the immediate closure of the refugee centre in the neighbourhood, and “immediate expulsion of illegal migrants”. The event was organised by the VMRO, Ataka and the NFSB political parties. Protesters chanted “Aliens out!” and “I do not want you here!”. Small groups of residents of the town of Harmanli repeatedly protested against the refugee reception centre in the city, organised mainly by VMRO and NFSB. In October, the extremely racist group “National Resistance” organised a protest march in Sofia against immigrants and shouted racist slogans in front of the police.

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

In 2013, **many mosques in Bulgaria were attacked** and desecrated with insulting, including racist, graffiti. With few exceptions,⁷⁰ the police and the prosecution did not show much interest and activity in identifying the perpetrators and punishing them. The **police was informed** about every single incident by **the local representatives of the Muslim religious denomination**. In some cases the perpetrators were identified. 2014 saw the biggest anti-Muslim demonstrations over the past five years, with virulent anti-Muslim and racist hate speech and bias-motivated violence. For all incidents in 2014, only **one person was convicted in 2015 for the broken windows of the mosque during a 14 February 2014 demonstration in Plovdiv. He was sentenced to 14 months of probation under Article 164(2) and Article 325(1) of the Criminal Code.**⁷¹

A strong boost to Islamophobic hate speech was given in 2016 by **the adoption of several regulations by different municipalities of Bulgaria prohibiting the veiling of Muslim women in public places**. Parliament adopted a comprehensive law in September, which restricts the wearing of clothing disguising or concealing the face in public. The draft was proposed by the Patriotic Front and its adoption was preceded by intense Islamophobic hate speech by representatives of that political coalition. Other public figures also spoke in support of the draft law, including the Prosecutor General, the Deputy Prime Minister and the Minister of Education.

⁷⁰ On 19 November 2013, around 11:40 p.m., the mosque in Blagoevgrad was subjected to yet another criminal act. A man broke the window and tried to break the door. The imam happened to be inside and called the police who caught the perpetrator on the scene of the crime. At 8:00 a.m. the following day the police called the imam and told him that the perpetrator would stop by and pay for the damages. He had only been offered to sign a “warning protocol”. On 20 December 2013, around 11:30 p.m., there was yet another attack against the Blagoevgrad mosque. The perpetrator threw stones at its windows, which triggered the security system. Security staff caught the perpetrator and handed him over to the police. The police drafted a protocol and, after being detained for several hours, the perpetrator was released for unknown reasons.

⁷¹ The official statistics, which BHC sought in 2016, mention only this sole indictment under Art. 164(2) and no other indictment for crimes against religions for the entire 2014, see: BHC, *Human Rights in Bulgaria in 2015* (2016).

6. DOMESTIC VIOLENCE IN THE CRIMINAL CODE, OTHER MEANS FOR PROTECTION FROM DOMESTIC VIOLENCE

An overview of the rights of women in Bulgaria in 2016 should, undoubtedly, grant its foremost place to the **signing of the Council of Europe *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*, which took place on 21 April 2016**. Signing the Convention is an important political act, which demonstrates the state's commitment to guarantee the highest standards of prevention and protection to eliminate violence against women, including domestic violence, sexual abuse, stalking, genital mutilation, forced marriage, forced abortion, forced sterilisation, etc. Moreover, in 2016 Bulgaria **started preparations to ratify the *Istanbul Convention***. Pursuant to Article 5(4) of the *Constitution* of the Republic of Bulgaria, all international agreements ratified under the constitutional procedure, published and enforced thereof, become part of the national legislative order and take precedence over existing domestic legislation that contradicts them.

6.1. Protection against domestic violence and other forms of gender-based violence

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

Following the resignation of the government in November 2016, the working group dissolved at a stage where the necessary legal amendments was not yet finalised. An important example of increased external monitoring on respecting women's rights in Bulgaria was the commitment made in 2016 by Ms Dubravka Šimonović, UN Special Rapporteur on violence against women its causes and

consequences, to visit Bulgaria the following year.⁷² For Bulgaria, this will be the first official visit by the UN Special Rapporteur on violence against women. According to the U.S. State Department *2016 Annual Report*, Bulgaria continues to perform poorly in terms of combating trafficking against human beings, where victims are predominantly women. In support of this observation, the report illustrates the continuing trend for decrease in the number of pressed charges for trafficking in human beings and points at the insufficient support provided to the victims of trafficking.⁷³

6.2. Issues faced in providing protection from domestic violence

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

A serious issue is the tendency for **courts to interpret as domestic violence only instances of physical violence** – in contradiction to the *Protection against Domestic Violence Act*.⁷⁴ As a further contradictory aspect of the practice, **many courts fail to recognise inaction as a form of violence**. Whether persons under plenary (full) or partial guardianship may be held liable in domestic violence proceedings has become another contested issue. When courts consider such perpetrators not liable, the victim is left without access to legal protection. The requirement to provide detailed description of the violence in the request for protection has further added to the negative trends. Moreover, courts continue to insist on formalities with respect to evidence: for example, despite establishing an act of violence, **the court would often refuse to grant the request if no evidence confirms the date it was committed. Courts disregard the continued/systemic character of committed violence** by limiting their ruling to the month up to the filing of the request and terminating proceedings on prior acts of violence committed beyond the period of one month indicated by the law.⁷⁵ Most judges disregard instances of violence, which follow the filing of the request. Thus, the protective measures are not commensurate with the scope of violence and risk endured by the victim. Furthermore, courts have ignored the ruling by the Supreme Court of Cassation clarifying that in cases of recurring violence and if the violence is ongoing, the request is valid regardless of whether it indicates particular dates and acts of violence.

Courts often refuse to issue a second protection order before the expiration of the preceding one disregarding the possibility that the violence may escalate and later require a more severe legal measure. When they have ordered the perpetrator to refrain from violence – a measure of indefinite

⁷² OHCHR (2016), Statement by Ms Dubravka Šimonović, Special Rapporteur on violence against women, its causes and consequences at the Human Rights Council, Thirty-second session. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20183&LangID=E>.

⁷³ U.S. Department of State, *2016 Trafficking in Persons Report* (2016), pp.108-109. Available at: <https://www.state.gov/documents/organization/258878.pdf>.

⁷⁴ Bulgaria, *Protection against Domestic Violence Act* (PDVA), Art. 2(1): “Domestic violence shall denote any act of physical, sexual, mental, emotional or economic violence, as well as attempts of such violence, coercive restriction of personal life, personal liberty and personal rights committed against individuals, who are related, who are or have been in a family relationship or in de-facto conjugal co-habitation”.

⁷⁵ *Ibid*, Art. 10(1): “The petition shall be submitted within one month of the act of domestic violence”.

duration – **upon a new act of violence courts refuse to grant stronger protection as the term of the preceding one has not expired.**

Moreover, according to the courts, once issued, a protection order is not subject to modification. This prevents the victim's access to adequate protection if the acts of violence escalate over time. Another contested issue addresses the situation where the request is initially filed with an authority other than the competent one (e.g. the police/other body, an NGO) to settle whether it is thus considered submitted within the deadline.

Although the Supreme Court of Cassation has already ruled on a private appeal observing that under such circumstances the request is within the deadline, the courts refuse to take this into consideration and continue terminating proceedings. They have a restrictive approach toward the measure establishing a “prohibition for the perpetrator to approach the victim” when the perpetrator and the victim share the same house. The courts consider such prohibition void and fail to recognise the need to protect the victim from being contacted by the perpetrator at the victim's working place, recreation spots, public spaces, etc.

Another issue is **the omission, in contradiction with the law, by courts to fine the perpetrator.** In the rare cases where they do impose fines, those are usually of the minimum amount due to the lack of evidence revealing the perpetrator's financial situation in accordance with which the fine should be determined. Next, the courts allow a counter petition for the protection of the alleged perpetrator to be filed by the latter under the same proceedings regardless of whether the set one-month term has expired. Furthermore, **the declaration⁷⁶ attached to the perpetrator's petition is deemed to cancel the presumptive force of the declaration by the victim, which deprives the latter of a key legal instrument to overcome evidential difficulties.** In the case of a child witness in domestic violence, under which circumstance the *Protection against Domestic Violence Act* treats the child as a victim of the said violence, the practice as to whether the child should be heard in the proceedings is inconsistent. In contradiction to an interpretative decision by the Supreme Court of Cassation ruling that the proceeding under the *Protection against Domestic Violence Act* is judicially administered, but does not constitute a judicial proceeding,⁷⁷ courts often approach it as the latter, which creates the misconception of their decisions as judgements. In many cases, the courts will encourage the parties under the *Protection against Domestic Violence Act* to seek mediation which, if undertaken, may increase the risk for the victims. **Court orders' enforcement is inefficient as a result of incompetence, poor grasp of the problematic, lacking sensitivity, and overall inaction by police bodies and the prosecutor's office.**⁷⁸ The prosecutors fail to charge perpetrators who violate the court orders (which constitutes a crime). Practically inapplicable are the two preventive measures provided by the law “obliging the perpetrator of violence to attend specialised programmes” and

⁷⁶ Bulgaria, *Protection against Domestic Violence Act*, Art. 9(3): “A declaration by the petitioner regarding the act of violence committed shall be attached to the petition under Article 8, item 1”.

⁷⁷ Assembly of Civil and Commercial College of the Supreme Court of Cassation (2013), *Interpretative Decision No. 6/2012 from 06/11/2013 ruled under Interpretative Case No. 6/2012, item 22*: “In view of the characteristics of the proceeding ordering protection measures against domestic violence, it follows that the former is not a judicial proceeding. It combines judicial protection by means of judicial administration and ordered administrative measures”.

⁷⁸ Bulgaria, *Protection against Domestic Violence Act*, Art. 21(3): “In the event of failure to enforce the court order the police body, which has established the violation, shall detain the perpetrator and advise forthwith the services of the prosecutor's office”.

“directing the victims to rehabilitation programs”. In reality, there exists no genuine protection from domestic violence.

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

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

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

Table 1. Number of trafficking victims in Bulgaria in the period between 2013 and 2015 by gender and degree of maturity

Year	Total number of victims	Females		Males	
		adults	minors	adults	minors
2013	538	427	48	46	17
2014	490	433	29	17	12
2015	383	353	28	23	5

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

The annual reports of Bulgaria’s **Supreme Prosecutor's Office of Cassation (SPOC)**, made available to the National Commission for Combating Trafficking in Human Beings, contained similar data. The number of **criminal proceedings for human trafficking** overseen by SPOC in the period was 540 in

2013, 495 in 2014, and 409 in 2015. The number of **newly-initiated pre-trial proceedings** in 2013 was 111, 92 in 2014, and 85 in 2015.⁷⁹

The 2016 annual report of the National Commission for Combating Trafficking in Human Beings presents the information below.

Trafficking for sexual exploitation remained the primary form of human trafficking over the reporting period. The number of victims trafficked for sexual exploitation and involved in criminal proceedings was 428 in 2013, 399 in 2014, and 316 in 2015. Most of the victims were women and girls, but there were also isolated cases of men and boys victims of the same crime (17 in 2013, two in 2014, and four in 2015). The number of cases of **trafficking for labour exploitation** was the second largest – 44 in 2013, 16 in 2014, and 22 in 2015. According to official data, the **most common victims of that crime were men and boys**. Data shows that the number of women and girls trafficked for labour exploitation over the entire reporting period was considerably lower (11 in 2013, three in 2014, and three in 2015). It is important to note also that according to organisations working directly with victims of human trafficking and identifying such victims informally, the number of sex trafficking victims and the number of trafficking victims exploited for labour are equal. The next most common form is **trafficking of women for the purpose of baby selling**. The number of criminal proceedings overseen by the prosecution was zero in 2013, 17 in 2014, and 17 in 2015. The number of victims kidnapped, trafficked, and held in slavery or servitude was 11 in 2013, 11 in 2014, and two in 2015. The least number of pre-trial criminal proceedings were conducted for **human trafficking for the removal of organs and body fluids** – a total of five proceedings were supervised by the prosecution over the entire reporting period.

According to data provided by the Supreme Prosecutor's Office, **the public prosecutors finalised 87 cases and 28 indictments were filed in court whereby 51 defendants were brought to justice to be tried in 2016**. As at the end of 2016, the number of **final convictions was 29**. A total of **26 punishments were imposed and four defendants were being imposed more than one punishment**.⁸⁰

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

According to data by the Supreme Prosecution Office, a total of 67 pre-trial criminal proceedings were initiated over the period from 1 January to 30 September 2016. Below is the data breakdown by the form of trafficking: 47 pre-trial proceedings for human trafficking for the purpose of sexual exploitation; 12 pre-trial proceedings for human trafficking for the purpose of forced labour; eight pre-trial proceedings under Article 182b(2) against pregnant women on charges of child-selling

⁷⁹ National Commission for Combating Trafficking in Human Beings, *2016 Annual Report*, pp. 7-8, available in English at:

<http://antitraffic.government.bg/en/%D0%BD%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%B5%D0%BD-%D0%B4%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4-2016/>.

⁸⁰ National Commission for Combating Trafficking in Human Beings, *2016 Annual Report*, pp. 7-8.

before delivery and 2 pre-trial proceedings under Article 182b(1) of the *Criminal Code* (child-selling). The total number of **victims involved in pre-trial criminal proceedings for human trafficking that were completed over the period from 1 January to 30 September 2016 was 329.**⁸¹

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

According to the *Combating Trafficking in Human Beings Act*,⁸² victims of trafficking are placed in **shelters for temporary placement** for a period of 10 days when they declare themselves as victims and at their request, under the conditions and order established by the regulations. The period of stay might be extended to 30 days upon the proposal of the local commissions, investigation authorities or the court when a victim expresses a wish to stay. Victims of trafficking who express the wish to cooperate with investigation authorities are entitled to **special protection status** for the period of the criminal proceedings, which includes permission for long-term stay in the country for foreign citizens, and extension of the period of stay in the shelters.⁸³ **After identification of the victims, the investigation authorities are obliged to inform them immediately about the possibility to receive special protection if they declare their consent to cooperate with the investigation of the crime within 30 days.**⁸⁴ If proposed by the State Agency for Child Protection, this period may be extended to two months when the victim is a child.⁸⁵ The prosecutor is obliged to issue a decision on whether **special protection status** is to be provided to the victim within three days after he/she receives the application. If the prosecutor refuses to grant such status, the decision may be appealed before a higher prosecutor within three days and the latter should decide immediately.⁸⁶ Permission for long-term stay of non-EU nationals is issued by the Ministry of Interior authorities under the rules of the *Foreigners in the Republic of Bulgaria Act*, on the basis of the prosecutor's decision. **Persons granted such permission are entitled to the rights of permanent residence holders, but with one exception – they are not allowed to leave Bulgaria and re-enter without a visa while the period of residence granted has not expired.** Permission is not issued to persons who do not have identity documents and refuse to cooperate with procedures to establish their identity.⁸⁷ **The period of stay in the shelters should be as long as the prosecutor's decision determines, and not longer than the duration of the criminal proceedings.**

Pursuant to Article 10 of the *Combating Trafficking in Human Beings Act*, shelters for temporary placement should be to ensure **decent accommodation** and conditions for maintaining personal hygiene, they should provide the victims with **food and medicines**, should ensure **urgent medical and psychological support**, and help **children connect with their families** as well as specialised authorities and organisations. The staff in the shelters consists of social workers, medical staff, teachers, psychologists, and lawyers.

⁸¹ *Ibid*, pp. 7-8.

⁸² Bulgaria, *Combating Trafficking in Human Beings Act* (20.05.2003), Art. 9(2).

⁸³ *Ibid*, Art. 25.

⁸⁴ *Ibid*, Art. 26(1).

⁸⁵ *Ibid*, Art. 26(2).

⁸⁶ *Ibid*, Art. 27.

⁸⁷ Bulgaria, *Combating Trafficking in Human Beings Act*, Art. 28.

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

According to the regulations for shelters,⁸⁸ medical care for the victims in the shelters is provided by healthcare establishments determined by the national or local commissions, with which contracts are signed for performance of these activities. Each victim should be medically examined. Regulation 26 of 14 June 2007 issued by the Ministry of Health provides for the rules and procedures for provision of **medical services to women who do not have health insurance** (which is the case of the most of the trafficked women).⁸⁹ Women and children are entitled to medical examinations, pregnant women - to tests to assess the risk of genetically transmitted diseases, and children and pregnant women who do not have health insurance - to tests for genetic diseases when there are relevant medical indications for such diseases. All new-born babies are entitled to screening for phenylketonuria and hypothyroidism. Health insured women have the right to choose freely the hospitals where they can obtain professional obstetrics help free of charge.

According to the 2016 report of the National Commission for Combating Trafficking in Human Beings “as at **the end of 2016, there were five functioning services for victims of trafficking in human beings** controlled and administered by the National Commission for Combating Trafficking in Human Beings (NCCTHB). **This was the highest number of services designed solely for VHTs as a target group since the enactment of the *Combating Trafficking in Human Beings Act in 2003***”. As at the end of 2016, the said services were provided and run by non-governmental organisations – SOS Families at Risk Foundation and Demetra Association.⁹⁰ There are **three residential care facilities (shelters) and two centres providing consultancy services** in the regions of Varna and Burgas. The overall capacity of the above facilities is **14 persons**. In 2016, a total of **15 women were provided with care and support at the residential care facilities** in the region of Varna and a total of **six women received care at the facilities in the region of Burgas**. One of the female victims was provided with support for subsequent reintegration.⁹¹

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

⁸⁸ Bulgaria, *Regulations for Shelters for Temporary Placement and Centres for Protection and Support of Victims of Trafficking* (09.03.2004), Art. 26.

⁸⁹ National Commission for Combating Trafficking in Human Beings, *Report on the Activity of the National Commission for Combating Trafficking in Human Beings 2007*, p. 15.

⁹⁰ National Commission for Combating Trafficking in Human Beings, *2016 Annual Report*, p. 4.

⁹¹ *Ibid*, p. 18.

meet the needs of adult victims of violence and/or trafficking and have the capacity to accommodate a **total of 66 persons**.⁹²

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

There is only one provision regarding crisis centres in the *Regulations for Implementation of the Social Assistance Act*, which simply defined the **crisis centres as places that provide a complex of social, health, and educational services for individuals who are victims of violence, trafficking or other forms of exploitation for a period of up to 6 months**. The provision explaining the purpose of the crisis centres was expanded later on to add that these services are delivered **“by provision of individual support, meeting everyday needs, legal counselling or socio-psychological support, whenever needed urgent intervention, including through mobile teams for crisis intervention”**.⁹³ The crisis centres are subordinated to the municipalities, on whose territory they are located in terms of selection and appointment of the staff. The activities in the centres are funded by the state through the municipality and should be supervised and controlled by the Social Assistance Agency at the Ministry of Social Policy.

In practice, the crisis centres **do not provide either special protection for children in regard to investigation or access to education**, a 2013 BHC monitoring revealed. Created as short-term social services, crisis centres are not prepared to function as providers of education or childcare.⁹⁴ They do not have the capacity to provide for effective opportunities for everyday individual and group activities. Crisis centres do not have the capacity to provide adequate health care for children in need. Due to lack of personnel, in some cases, children are hospitalised without an adult companion. About a third of the children in crisis centres do not attend school.⁹⁵ Crisis centres do not provide specific psychological or psychotherapeutic programmes, vocational training or legal assistance, and in cases where the victim’s family is involved in trafficking, there are no alternatives for placement after their release from the centres.

The lack of crisis centre specialization and/or failure to observe it where there is such, **prevents the actual separation of child victims from children who are in conflict with the law**. In March 2012, the State Agency for Child Protection and the Social Assistance Agency adopted a **Methodology**

⁹² *Ibid*, p. 18.

⁹³ *Regulations for Implementation of the Social Assistance Act*, Additional provisions, Art. 25 (last amended on 11.11.2016).

⁹⁴ Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform* (2014), p. 299, available in English at:

http://www.bghelsinki.org/en/media/Children_Deprived_of_Liberty2014_EN.pdf.

⁹⁵ *Ibid*, p. 299.

Handbook for the provision of the “crisis centre” social service (Methodology Handbook),⁹⁶ which was an attempt to establish the requirements for setting up and operating crisis centres and defining their specialisation for:

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

Despite the good practices described in it, the Methodology Handbook cannot be implemented in practice. In the few cases where centre specialisation has actually been undertaken, the Social Assistance Departments (SAD), the judges and the district courts have no obligation to observe this specialisation and, as a result, **children of the aforementioned three categories are still being placed in the same institutions.**⁹⁷

There is no fast court proceeding to long-term placement of children in crisis centers, a new 2016 BHC report revealed.⁹⁸ Children can be placed in crisis centres for up to six months, which is too long and perverts the role of a service designed for specialized protection. Centers that should guarantee specialized support for children at risk are being transformed into conventional institutions. Under the Bulgarian law, the hearing and the court decision take place within a month after the administrative placement by Social Assistance Departments, which, compared to other countries, is a very long time frame. Yet, the analyzed data shows that the institutions do not meet even this deadline. **Court decisions take months.** The survey found delays in issuing court decisions in 79 cases (27% of all the cases). In practice, **the actual court decision is announced two or even three months after the child has been placed as an emergency in crisis center, and still there were several placement cases without court decisions.** The optimal time for intervention and overcoming the emergency situation of the children victims of trafficking/violence is not more than six weeks according to the experts. In 2015 and 2016, the number of accommodated children in the 15 crises centers for children was 289, and only in 29 cases (1 of 10) the child has stayed in the facility for just a month.⁹⁹

Most crisis centres **do not employ medical staff**, although children placed there often need more than psychological and social work to overcome emotional crises and past trauma. If the crisis centre has not signed a civil contract with a medical doctor, the child’s address registration needs to be changed and a general practitioner temporarily selected.¹⁰⁰ Not all residential areas, where the crisis centres are located, have 24-hour access to a medical doctor. If needed, emergency medical service is sought from the closest town. Crisis centres may sometimes turn into facilities housing children

⁹⁶ Bulgaria, Social Assistance Agency and State Agency for Child Protection (2012), *Methodology Handbook for the provision of the “crisis centre” social service*, available in Bulgarian at: <http://stopech.sacp.government.bg/file.php?fid=341>.

⁹⁷ Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform* (2014), p. 250.

⁹⁸ BHC, *Crisis Centers in Bulgaria* (2016), <http://www.bghelsinki.org/media/uploads/crisis-centres-2016.pdf>.

⁹⁹ *Ibid.*

¹⁰⁰ Bulgarian Helsinki Committee, *Crisis Centres for Children in Bulgaria – Between the Social Service and the Institution* (2011), p. 18, available in Bulgarian at: http://www.bghelsinki.org/media/uploads/special/finalen_kc_15.pdf.

with **serious health problems**.¹⁰¹ This situation requires specific material conditions and staff, which are not available at the crisis centres. Over the years, there have been cases of children with infectious diseases such as hepatitis B and syphilis, children suffering from drug addiction, as well as pregnant girls.¹⁰² At some centres, until the results of blood tests are received, the newcomer spends the nights isolated from the other children.¹⁰³ The availability of dental care at most crisis centres is also a particularly problematic area.¹⁰⁴ In most cases dentists provide their services on a pro bono basis.¹⁰⁵

Many children placed in crisis centres have previously never attended school or, if they have, their certified level of schooling does not correspond to their actual level of knowledge.¹⁰⁶ In many cases, however, children subject to compulsory education **do not attend school**. At the end of November 2013, 29 children were not attending school, corresponding to one third of all resident children at the time of the research.¹⁰⁷ Education is still the key issue about the stay of children in the crisis centres. **Every 6th child placed in crisis centers in Bulgaria has no access to education**, according to the most recent 2016 BHC report on the topic. The state of education in Bulgaria's crisis centers for children victims of trafficking or violence is still a pressing concern. According to the managers of the 15 crisis centers for children the BHC visited, in 2015-2016 too much emphasis was put on the residing nature of the facilities rather than on the specialized and individual support (psychological, legal, social) that should be provided to a child in a crisis situation, especially when an emergency accommodation is concerned. The majority of children have very poor literacy skills that do not correspond to their completed level of educational - many of them can hardly read and are unable to write, and do not possess fundamental knowledge and skills. The children who have dropped out of the education system before their accommodation in a crisis center are at a higher risk of being deprived of education after entering the crisis centre. In 2015-2016, **17% of the residents (48 out of 289) in the 15 crisis centers in the country had no access to education**. This means that every sixth child is temporarily or permanently deprived of education due to conventional reasons or negative attitude towards problematic children, lack of interest from the institutions, bureaucratic obstacles (failure to provide the necessary documents, lack of regulations and under-aged pregnancy).¹⁰⁸

Crisis centres have a **restricted regime**. Leaving the crisis centre without permission is treated as an attempt to run away.¹⁰⁹ Telephone calls, as well as visits, always take place in the presence of a social worker who keeps a record of the conversation/meeting.¹¹⁰ All these institutions are of the closed type, therefore **the child is not entitled to leave them**. For instance, in the case *A. and Others v.*

¹⁰¹ Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform* (2014), p. 256.

¹⁰² *Ibid*, p. 256.

¹⁰³ *Ibid*, p. 256.

¹⁰⁴ *Ibid*, p. 257.

¹⁰⁵ *Ibid*, p. 257.

¹⁰⁶ *Ibid*, p. 257.

¹⁰⁷ *Ibid*, p. 257.

¹⁰⁸ Bulgarian Helsinki Committee, *Crisis Centers in Bulgaria* (2016).

¹⁰⁹ Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform* (2014), p. 258.

¹¹⁰ *Ibid*, p. 258.

Bulgaria, ECtHR found that the placement of a child in a crisis centre amounted to a deprivation of the child's liberty under Article 5 of the ECHR.¹¹¹

Due to the uneven distribution of crisis centres throughout the country, child protection bodies sometimes place children in crisis centres **far from their normal living environment**.¹¹²

Regarding children placed outside their family environment, the *Child Protection Act* and supplementary legislation contain no provision allowing **disciplinary punishment**.¹¹³ According to the Social Assistance Agency, the disciplinary practice and the procedure for filing complaints and signals by children placed in crisis centres are provided for in the *Ordinance on the Criteria and Standards for Social Services Provided to Children*. The service provider should ensure free and unimpeded submission of complaints and signals by children as well as develop a procedure for protection from violence, misconduct and discrimination. Furthermore, the provider exercises internal control on the work of the staff and the quality of the care provided.¹¹⁴ Thus, for example, **each crisis centre has developed and adopted their own set of rules for disciplinary practices**.¹¹⁵ This contravenes international standards.

Running away and breaking the rules of the crisis centre are the severest types of misconduct (although breaking rules may be a sign or a symptom of crisis). The limitations imposed after establishing a violation of the rules often deprive the children of the opportunity to participate in activities in the crisis centre or in another outside event, or of access to television. Different types of measures may be imposed: 1) punishment **through labour** (the child is additionally included to the timetable for cleaning the common and sleeping premises), 2) punishment through **solitary confinement** (the child is forbidden to leave their space in the bedroom), 3) punishment through **school non-attendance**, 4) **banned access to television**.¹¹⁶

All above-mentioned problems are not mentioned in state reports and still make it impossible to provide real special protection of children victims of trafficking in practice. The information below

¹¹¹ ECtHR, *A. and Others v. Bulgaria*, 29 November 2011, application No 51776/08, §§ 93-98.

¹¹² Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform* (2014), p. 258.

¹¹³ *Ibid*, p. 258.

¹¹⁴ Information received from the Social Assistance Agency under a request for access to public information with Ref. no. RD-04-109 from 05 September 2014.

¹¹⁵ Methodology for the organisation of work in the provision of social services adopted by Vyara, Nadezhda i Lyubov Crisis Centre – Sofia, Art. 18 – 18.1: 18. Every member of the personnel of the Centre encourages socially acceptable behaviour of the child. Where behaviour is deemed unacceptable, staff members undertake measures in accordance with the Guidelines for Incentives and Punishments document approved by the director. 18.1. In the application of the Guidelines for Incentives and Punishments, personnel at the crisis centre shall observe the following basic principles: (a) individual approach to determine and apply incentives and punishments at the crisis centre in accordance with the age, ability to understand and the individual needs of the child; (b) respect for the personality of the child and consideration for their dignity; (c) punishments shall not contain physical force or inflict pain or injury; (d) respect for the opinion of the child and inclusion of the child in the process of determining the level of the incentive or punishment; (e) common action by members of the personnel at the centre in determining incentives, the level, duration and cancellation of the punishment; (f) publicity of the incentives and punishments.

¹¹⁶ Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform* (2014), p. 259.

reveals the capacity of the shelters and crisis centres reported by the state. According to the National Commission for Combating Trafficking in Human Beings the **total capacity of the existing accommodation services is around 211 places (the places for children include children victims of violence and delinquent children and are 145 and those for adults are 66)**. However, from the information provided by the NGOs running these shelters and centres it seems that altogether the victims of trafficking who were provided protection and support in social services in 2016 were **34 and 10 persons at risk were protected from recruitment in trafficking**. The Supreme Prosecutor's Office reports about **329 victims (10 times more than the persons provided with support)** who had been involved in criminal proceedings for trafficking, whose cases were completed in 2016.

According to the *2016 Annual Report* of the National Commission for Combating Trafficking in Human Beings the SOS Families at Risk Foundation in Varna provided a total of **17 victims** with support and care at the support service facilities run by the NGO – **an advisory centre, a crisis centre, a shelter for temporary accommodation, and a centre for the protection of and support for human trafficking victims**. One of the victims was an underage girl. The victims' age ranged from 17 to 43 years. **Seven of the victims had some disability or disease, in most cases mild to moderate intellectual disability and schizophrenia**. Fourteen of the victims had been trafficked for the purpose of sexual exploitation and three victims had been forced into begging. Eleven of the NGO's clients provided with support and care **had testified at various stages of criminal proceedings** launched either in Bulgaria or in the country of destination.¹¹⁷

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

- **Shelter for temporary accommodation** and centre for the protection of and support for victims of human trafficking in the Municipality of Burgas. The shelter provides protection and support to adult females identified as victims of human trafficking. The services include: safe and secure accommodation, meeting the victim's basic needs, such as food, access to medical care, provision of essential supplies, crisis counselling and follow-up psychological support and counselling, legal counselling, and filing an application for victim assistance and financial compensation. Social work with the victims includes social mediation before institutions, mediation in dealing with the victim's family, escort in meetings with institutions or in job interviews, assistance with obtaining documents, empowerment and reintegration work, social inclusion, coaching for independent living, occupational guidance and assistance with job applications, and inclusion of the victims in the educational system (where needed). A total of **five victims of human trafficking were accommodated at the shelter** from April 2016 when it was opened, till the end of the year.
- A **shelter for temporary accommodation and follow-up reintegration** in the Municipality of Burgas. The shelter for temporary accommodation and follow-up reintegration is located separately from the shelter for temporary accommodation and centre for the protection of and support for victims of human trafficking. The beneficiaries of the service are victims of human trafficking who have already used the services of the shelter for temporary accommodation, protection, and support. The social work focuses on successful follow-up reintegration, follow-up observation, social mediation, and advocacy. It is an open facility and the services provided in it

¹¹⁷ National Commission for Combating Trafficking in Human Beings, *2016 Annual Report*, p. 55.

are aimed at the victims' empowerment with a view to their successful reintegration into society. **One victim of human trafficking** was accommodated at the shelter from April, when it was opened, until the end of 2016.

- **Crisis centre for children and adult victims of violence.** The service has been available to victims for six years and includes a range of services aimed at coping with the crisis following the violence suffered by the victims. The victims are provided with protection and their basic needs are met. The centre offers accommodation for a period of up to six months and has the capacity to accommodate eight victims at a time. In 2016, the crisis centre provided care and support to **26 clients in total** - 23 victims of domestic violence and **three victims of human trafficking**.
- **Crisis centre for child victims of violence.** The centre provides **24/7 care to children who have experienced violence**. It is staffed by professionals – social workers, educators, and a psychologist, who strive to ensure that the children accommodated at the centre are provided with protection and will overcome the trauma from the violence they experienced. The centre has the capacity to accommodate ten child victims of violence. In 2016, the centre provided services to a total of 25 clients. **Five of them were at risk of being recruited to trafficking and one was a victim of human trafficking**.
- Vselena [Universe] Centre, the first Sexual Assault Referral Centre (SARC) in Bulgaria. The centre has been in operation since 1 June 2016 under a multilateral cooperation agreement between the Municipalities of Burgas and Sozopol, Burgas Regional Prosecutor's Office, Burgas Regional Police, Burgas Regional Administration, the Burgas University Hospital, and *Demetra Association* with the active support of the British Embassy in Sofia.¹¹⁸ The SARC was set up to provide medical assistance, crisis counselling, and support to the criminal investigation in cases of rape and sexual assault. Its activities are meant also to prevent sexual violence within Burgas Province, Burgas Municipality, and Sozopol Municipality. A total of 13 victims of sexual assault were provided with support and care at the SARC from June 2016 when it was launched until the end of the year.¹¹⁹

In 2016, the PULSE Foundation assisted and supported **seven trafficking victims and five other persons at risk of being recruited**.¹²⁰

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

7.3. Assistance and financial compensation for victims of trafficking

The amendments to Article 6(2) of the *Assistance and Financial Compensation to Crime Victims Act* (AFCCVA) entered into force on 6 October 2016. Pursuant to the amended provision, the overseeing prosecutors in charge of pre-trial proceedings are required to ensure that **the investigation bodies respect the victims' rights and inform them about the options and services available to them**. In view of the obligation to inform the victims of crime (including victims of human trafficking) of their

¹¹⁸ <https://www.gov.uk/government/world-location-news/british-embassy-sofia-and-partners-launch-first-pilot-sexual-assault-referral-centre-in-bulgaria>

¹¹⁹ National Commission for Combating Trafficking in Human Beings, *2016 Annual Report*, p. 57.

¹²⁰ *Ibid*, p. 66.

rights, the Prosecutor General issued a letter dated 21 October 2016 publicising the templates of the form and of the statement for provision of information to the victims about their rights related to assistance and financial compensation¹²¹ of the AFCCVA to be used in pre-trial proceedings. According to the Prosecutor General the templates were approved by the Ministry of Justice and are available on its information site, translated into foreign languages as well. The authors of this report, however, were unable to find them. No victims of trafficking were identified as beneficiaries of compensation during the last several years either.

8. GUARDIANSHIP SYSTEM – ATTEMPTS FOR REFORM

8.1. ECtHR cases and attempts for legislative amendments

Bulgaria ratified the UN *Convention on the Rights of Persons with Disabilities* (CPRD) on 26 January 2012. A few days earlier, on 17 January, the Grand Chamber of the European Court of Human Rights issued its judgment in the case of *Stanev v. Bulgaria*.¹²² In 2000, Mr Rusi Stanev was placed under partial guardianship by a Bulgarian court and a municipal employee was appointed as his guardian. In 2002, without ever having met Mr Stanev, the guardian had him placed in a social care institution in a remote mountainous area 400 km from his home. Once there, the director of the institution became his guardian and controlled all of his affairs. The conditions in the institution, as documented by the Council of Europe Committee for the Prevention of Torture, were extremely substandard. The amount of food was insufficient, the residents were obliged to sleep in their coats during winter due to the lack of proper heating, the sanitary facilities were nothing more than holes in the ground covered by dilapidated shelters in the institution courtyard. Mr Stanev had no ability to challenge this situation, as he could not initiate any legal proceedings, including proceedings to lift his guardianship, without his guardian's consent.

ECtHR established that Mr Stanev's placement in the social care institution, against his will and for an indefinite period, on the order of a government employee and without necessary safeguards, meant that Mr Stanev had **clearly experienced deprivation of liberty, in violation of Article 5(1) ECHR**. The Court went on to state that a need for social assistance, such as was clear in Mr Stanev's case, should not automatically lead to measures involving deprivation of liberty. It was the presence of a mental health condition, which had led directly to the decision to place Mr Stanev in the institution, and this was not a sufficient justification under the European Convention of Human Rights. The system of guardianship in Bulgaria meant that Mr Stanev had no realisable right to challenge the lawfulness of his detention in the Bulgarian courts (Article 5(4) ECHR). His legal standing to do so had been removed at the time he had been placed under guardianship, which the Court found to be a breach of his rights under this article. Given that Mr Stanev's right to liberty had unlawfully been restricted,

¹²¹ http://gdnп.mvr.bg/NR/rdonlyres/B9F10B09-736C-4BF4-8A06-5E214892131F/0/Protokol_ZPFKPP.pdf

¹²² ECtHR, *Stanev v. Bulgaria*, application No. 36760/06, Judgment of 17 January 2012. This case was a joint litigation project of the Bulgarian Helsinki Committee and the Budapest-based Mental Disability Advocacy Centre. The two organisations provided the applicant's legal representation in the proceedings.

the Court went on to assess whether he would be able to have this situation recognised and compensated under Bulgarian law. The Court found that this was not the case, due to Mr Stanev's status as a person under guardianship, and the Bulgarian government had breached his right to compensation (Article 5(5) ECHR). **ECtHR found violations of Articles 5, 6, 3 and 13 of the European Convention on Human Rights. Unfortunately, Mr Stanev died on 9 March 2017, without his guardianship being lifted, after 12 years of judicial proceedings and five years after winning his case at the Court in Strasbourg.**

The ratification of the UN *Convention on the Rights of Persons with Disabilities* and the *Stanev* judgement, which took place at the same time, triggered the formation of a **working group at the Ministry of Justice on the implementation of Article 12 of CPRD in domestic legislation**. The working group was composed predominantly of representatives of non-governmental organisations. In August 2012 it prepared a **concept paper**,¹²³ which was presented to the public at the end of September.¹²⁴ **On a session of the Council of Ministers held on 14 November 2012 the Concept paper was adopted by the Council of Ministers.**

The concept paper envisages **abolition of the institute of full incapacitation and adoption of protection measures in the form of advanced directives, supportive decision-making and partial guardianship ('попечителство')**.¹²⁵ It also spells out the conditions, under which a **protection measure** may be imposed on a person with intellectual/psycho-social problem. They are to be based on the principles of necessity, proportionality, flexibility, respect for the will of the person, periodic review and avoiding conflicts of interests. The concept paper was deficient on the scope of rights,¹²⁶ which are to be guaranteed to the persons with reduced capacity and in providing for a time frame for the adoption of the legislative amendments. It envisaged elaboration of draft laws and/or amendments to the current legislation so that plenary guardianship is abandoned as a notion and detailed support measures are incorporated in the laws to enable people with psychosocial and intellectual disabilities to develop their full potential.

¹²³ Bulgarian Centre for Non-profit Law, *Concept paper for amendments in domestic legislation, related to the implementation of the standards of Art. 12 of the UN Convention for the Rights of Persons with Disabilities*, available in Bulgarian at: http://www.bcnl.org/uploadfiles/documents/news_docs/2012/proekt_koncepcia.pdf.

¹²⁴ Bulgaria, Ministry of Justice, *News*, 27.09.2012, <https://mjs.bg/117/6/>.

¹²⁵ Partial guardianship is used in the concept paper as a last resort for people who are in permanent incapacity to form and express their will. It should be applied **only after the court has exhausted the other less restrictive alternatives and only in these spheres of life in which the person is not able to form and express will**. Guardian is appointed by the court for the concrete case and person only after it is convinced that the person is not able to act without the guardian. Only in this case the guardian makes decision instead of the person (substitute decision-making) and for a certain period of time and with the obligation to research what the wishes and needs of the person under guardianship are. The person to be placed under guardianship is asked to point out whom to be the guardian. To guarantee the rights of the person to be placed under partial guardianship the person should be heard in person and a complex assessment by psychiatrist, psychologist, social worker, personal physician and a trust person should be done.

¹²⁶ The concept envisages in short term (without specification what short term means) only the *Family Code*, the *Persons and Family Act* and the *Civil Procedure Code* to be amended as in these acts provide for the terms and procedures for placement under guardianship. This means that only rights to access to justice and rights to marry, adopt children and take care of biological children as well as to inherit property by the spouse and the family would be regulated in a new way. The other rights are provided for in other acts that are envisaged to be amended in long-term plan (again not specified).

On 15 May 2014, the Ombudsman requested that the Constitutional Court in Bulgaria announce Article 5(1) of the *Persons and Family Act* with regards to ‘and they lose their legal capacity’ and Article 5(3) of the same act as provisions in violation with Article 4(2), Article 5(4) and Article 51(3) of the *Constitution* of Bulgaria. **The Ombudsman stated that Article 5 of the *Persons and Family Act* violates the rights of people with intellectual/psycho-social disabilities as it poses a restriction of their legal capacity, which is not proportionate to their condition and is, therefore, discriminatory.** The Ombudsman stated also that this legislation in Bulgaria is a violation of Article 4(2) and Article 12(2) of the *UN Convention on the Rights of Persons with Disabilities*.¹²⁷

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

The Constitutional Court considered the gaps in the legislation concerning people under guardianship. Its decision states: **“The lack of detailed legislative regulation of the legal regime of the incapacitated persons leads to not just limitation of those rights, the exercise of which carries a risk to the interests of incapacitated, third parties or the society, but also limits the exercising of unreasonably wide range of rights, including the constitutional ones”**. The decision also states that *“the current legislative framework does not take into account the requirements of the CRPD – the restrictions of the rights of such persons to be proportionate to their condition, to apply for the shortest possible term and to be subject to regular review by an independent body”*. However, on 17 July 2014 the Court held that the disputed provisions do not contradict the Constitution as in this way the legal status of incapacitated persons would not be improved and because thorough amendments of the legislation are needed.¹²⁸

As a product of the working group at the Ministry of Justice, which consisted of NGOs, academic and governmental representatives, a ***Draft Law on the Natural Persons and the Support Measures***¹²⁹ was elaborated and introduced in parliament by the Council of Ministers on 4 August 2016. **The draft law is centred on the UN CRPD recognition of legal capacity concept and was elaborated to implement**

¹²⁷ Bulgaria, Ombudsman, *Request of the Ombudsman on the basis of Art. 150(3) of the Constitution for announcing Art. 5(1) of the Persons and Family Act with regards to ‘and they lose their legal capacity’ and Art. 5(3) of the same act as provisions in violation with Art. 4(2), Art. 5(4) and Art. 51(3) of the Constitution of Bulgaria*, available in Bulgarian at: <http://www.ombudsman.bg/public-positions/3062?page=3#middleWrapper>.

¹²⁸ Bulgaria, Constitutional Court, Decision 12/17.07.2014 issued on the case 10/2014. The decision is available in Bulgarian at: <http://constcourt.bg/acts>.

¹²⁹ Bulgaria, Council of Ministers, *Draft Law on the Natural Persons and Support Measures*, available in Bulgarian at: <http://parliament.bg/bills/43/602-01-48.pdf>.

the supported decision-making concept in legislation. Discussion and voting meetings at the parliament are expected.

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

In January 2016 the *Social Assistance Act* was amended. The amendments concern the placement of persons with disabilities placed under **plenary guardianship** in **residential institutions/services**. The first amendment is that social services are provided according to the **personal wish and choice** of persons under plenary guardianship and the opinion of the guardian and if there is a contradiction between them, the personal wish of the person under plenary guardianship is leading.¹³⁰ The second amendment is that such placement would be done **by the district court upon written declaration of the wish of the person in need** and temporary administrative placement by the SAD is to be done **only when no other opportunities exist**, again upon written declaration of the wish of the person.¹³¹ The request should be accompanied by a report about the opportunities for home care of the person; assessment of the needs of the person and report about the available appropriate social community-based services. In case of temporary administrative placement, the SAD should inform the court in one month. The stay of a person under plenary guardianship in a residential service **cannot be longer than three years**, but it can be prolonged if there are not any other opportunities for care.¹³² When deciding on the placement the court may gather evidence but **must explore the personal wish** of the person in need and the SAD representative and the guardian should be

¹³⁰ Bulgaria, *Regulation for Implementation of the Social Assistance Act (Правилник за прилагане на Закона за социално подпомагане)*, Art. 16a(3), available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/-13038592>.

¹³¹ Bulgaria, *Regulation for Implementation of the Social Assistance Act*, Art. 16b.

¹³² Bulgaria, *Regulation for Implementation of the Social Assistance Act*, Art. 16.

present.¹³³ The court must issue a decision in one month. The court may decide placement in institution **only if there are no options** for home care or community-based residential centres.¹³⁴ The person under plenary guardianship may ask to leave the residential services/institutions under the same procedure.

Although a good step toward the respect and safeguarding of the rights of persons with disabilities, these amendments are unclear as to why they do not apply to all persons with disabilities who need care, but only to those who are under plenary guardianship.

8.2. Inhuman and degrading treatment in institutions for adults with mental disabilities

A 2014-2015 BHC **monitoring in 40 institutions and 81 residential community-based services for persons with psychosocial and intellectual disabilities** where 3,993 persons were living, showed that 2,794 (2,447 of whom live in institutions) were placed under plenary guardianship, 230 – under partial guardianship and the rest were not placed under guardianship.¹³⁵ In addition, the monitoring visits in 81 new residential community-based services concluded that **placement again is done upon request of other persons, not the person with disability and his/her wish often is not explored and that guardians of the majority of the users placed under guardianship are staff members.**

The same research revealed that **application of medication for the reasons of discipline and physical seclusion and restraint are still a practice. Caged spaces, without any furniture, poor hygiene and access to sanitary facilities, arbitrary placement in them by orderlies or nurses for uncertain periods, prescription of medicines on the phone** are some of the other inhuman and degrading practices the researchers described. In several cases they found that persons with psychosocial problems placed in institutions caused a serious physical injury to a guard in an escape attempt and murder of another resident (in search for a cigarette). The residents have also severe self-destructive behaviour. **The material conditions and the attitude of the staff in some of these institutions continue to amount to inhuman and degrading treatment.**¹³⁶

¹³³ Bulgaria, *Regulation for Implementation of the Social Assistance Act*, Art. 16c.

¹³⁴ *Ibid*, Art. 16c(6).

¹³⁵ Bulgarian Helsinki Committee, *The Non-happening Deinstitutionalization of Persons with Mental Disabilities* (2016), monitoring report, Sofia, available in Bulgarian at:

[http://www.bghelsinki.org/media/uploads/documents/reports/special/2016_nesluchvashtata_se_deinstitutcionalizacia_na_licata_s_umstveni_zatrudnenia_v_bulgaria_\[978-954-9738-37-7\].pdf](http://www.bghelsinki.org/media/uploads/documents/reports/special/2016_nesluchvashtata_se_deinstitutcionalizacia_na_licata_s_umstveni_zatrudnenia_v_bulgaria_[978-954-9738-37-7].pdf).

¹³⁶ *Ibid*.

9. CIVIL SOCIETY MONITORING OF CLOSED INSTITUTIONS

In its 2011 Concluding observations the Committee against Torture expressed concerns that independent monitoring by civil society organisations is not allowed in all cases of detention and that non-governmental organisations such as the Bulgarian Helsinki Committee require a prosecutor's permission for access to pre-trial detainees. The Committee recommended that Bulgaria ensures "independent, effective and regular monitoring of all places of detention by independent non-governmental bodies" (§ 11 of the Concluding Observations). With regard to the possibilities for human rights NGOs to access pre-trial detainees, the situation has not changed since the last review of Bulgaria by the Committee. BHC has access and can interview in private all convicted prisoners on the basis of an agreement with the Ministry of Justice. However, it must seek the permission of a prosecutor in order to access and interview pre-trial detainees. This prevents the organisation from effectively monitoring torture as most ill-treatment by law enforcement officers takes place during the first hours of arrest.

Moreover, the situation with the possibilities of the civil society organisations to monitor other closed institutions deteriorated since the Committee's last review of Bulgaria. In the past human rights organisations, including BHC, could monitor psychiatric hospitals, children's institutions, social care homes for adults with mental disabilities on the basis of agreements with the respective responsible ministries. Over the past three years several ministries refused to renew their agreements with the BHC. In 2015, the then Minister of Healthcare Mr Peter Moskov refused to renew the agreement of the Ministry with the BHC after a public criticism the organisation made of his racist statements directed against Roma. Since then the BHC approached three ministers who took office after Moskov. All of them have refused to renew the agreement. As a result, BHC researchers cannot visit psychiatric hospitals and institutions for medico-social care for children aged 0-3 years, the most vulnerable of all institutionalized children in Bulgaria.

In 2016, the Ministry of Labour and Social Policy (MLSP) refused to renew its agreement with BHC for monitoring institutions for adults with mental disabilities referring to the fact that the latter are under the authority of the municipalities. In the past, however, BHC had an agreement with the Ministry despite this. In the then acting agreement the Ministry undertook a number of commitments, including to facilitate BHC monitoring and to respond to concerns and signals from the organisation related to violations of the law. The refusal of the MLSP to renew its agreement with BHC has made the organisation's monitoring activities difficult as it has to negotiate its visits to institutions on a case-by-case basis with the municipal governments.

In 2017, the Ministry of Education and Science (MES) announced that it was not going to respect its agreement with the BHC on monitoring the schools for delinquent children. At the same time these institutions adopted internal regulations preventing NGOs and media to meet with children in private and to visit the school premises. No justifications were given for these restrictive measures. BHC has been carrying out visits to schools for children with delinquent behaviour since 1994. Over the past ten years the organisation helped a number of children who are placed in such institutions to protect their human rights before domestic, as well as before international human rights bodies (see e.g. the

judgments of the European Court of Human Rights in the cases of *A. and Others v. Bulgaria* (2011), *D.L. v. Bulgaria* (2016), *I.P. v. Bulgaria* (2017)).

10. DEINSTITUTIONALISATION IN CHILDCARE

Before 1989, the policy of previous governments of Bulgaria was directed to isolate the children/adults with disabilities in closed institutions out of sight of the public. The process of deinstitutionalisation began with the Childhood for All Project in mid-2010 with the ambition to first transfer the most vulnerable group of 1,797 children with disabilities from the institutions for children with intellectual disabilities (ICID) and children over three years of age from the institutions for medico-social care for children (IMSCC).¹³⁷ Gradually, five projects were initiated in 2012 as part of the implementation of the ***Vision on the Deinstitutionalisation of the Children in the Republic of Bulgaria***. In 2010, it was planned that the children from ICID and IMSCC would be transferred to 149 family-type (residential) accommodation centres (FTAC) and 36 protected houses and would be provided with day care and rehabilitation services in one day care centre for children with disabilities and eight social rehabilitation and integration centres. All these facilities were to be built under the Childhood for All Project in 81 municipalities nationwide with a total capacity of 2,076 places. The initial plan was to have all children transferred by the end of October 2014. The map of community-based services was updated in 2014 to include the construction of 160 FTAC, including 37 for children without disabilities.¹³⁸

At the start of the reform in 2010, there were 137 childcare institutions (IMSCC, ICID and the third type of residential childcare institution – institutions for children deprived of parental care, ICDPC) with a total of 5,965 children living in them. By 31 December 2014, the total number of children and adolescents living in institutional care across 95 childcare institutions was 2,218:¹³⁹

- 925 children in 29 institutions for medico-social care for children (IMSCC),¹⁴⁰
- 1,235 children and young people in 47 institutions for children deprived of parental care (ICDPC). Nine of them housed 196 children aged 3 to 7 years and 38 of these institutions housed 1,039 children aged 7 to 18 years and 78 young people over the age of 18,¹⁴¹
- 508 children and young people in 19 institutions for children with intellectual disabilities (ICID), of whom 181 children and 327 young people over the age of 18.¹⁴²

¹³⁷ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2014* (2015), p. 79.

¹³⁸ *Ibid*, p. 79.

¹³⁹ Information provided by the State Agency for Child Protection (SACP) to BHC on 27 January 2015 under a request for access to public information, ref. No. 14- 00-1/12.01.2015; information provided to BHC by Social Assistance Agency, ref. No. 05-14 of 29.01.2015; information provided by the Ministry of Health on 5 February 2015 on request by BHC; database of the Childhood for All Project.

¹⁴⁰ 1,130 children in 29 IMSCC at the end of 2013. Data provided to BHC by the Ministry of Health on 5 February 2014: “Number of children by 31 December 2014: – 925 in residential care, 50 prematurely born infants in special wards and 716 children from families using the services of the day care centres daily, hourly and weekly. No IMSCC were closed in 2014”.

¹⁴¹ 1,492 in 51 ICDPC at the end of 2013. The following ICDPC were closed down in 2014: ICDPC in Popovo, ICDPC St. Ivan Rilski in Sofia and ICDPC Rada Kirkovich in Plovdiv. The ICDPC in Borovan was closed on 1 January 2015.

For one-third of the children and young people from the target group of the Childhood for All Project children and young persons with disabilities in ICID and the only institution for children with physical disabilities (ICPD) and children aged over three years in IMSCC who have “left” the institutions, the reform is actually a dead-end. According to official statistics, between the start of the project on 1 June 2010 and 31 January 2015, the number of children and young persons with disabilities placed in ICID/ICPD and that of the children above three years in IMSCC has been reduced by 668.¹⁴³

Where did these children go?

- **In a family environment: 390** (almost 60%). Of them: adopted – 272 children; reintegrated into their biological families – 61 children (including two unsuccessful reintegrations where the children had to be returned to the institution); in foster care – 55 children; left because of coming of age – two;
- **Transfer to another institution: 88** (13.1%). Of these, to a social educational professional centre - six young people; to ICDPC - 38 children; to institutions for adults with intellectual disabilities - 44 young people;
- **To residential community-based services: 79.** Of these: to other FTAC - 51 children; to sheltered houses - 22 young people; to transient homes - six children;
- **Death cases: 111** (16.6%).¹⁴⁴

The analysis of these figures reveals that for 199 out of 668 children and young people that “left” the institutions, deinstitutionalisation did, in fact, not take place. According to the “black statistics” of deinstitutionalisation, for 1 out of 3 children (29.7%) the “exit” from the institution was either death or transfer to another institution. **In four years of reforms, only 469 of the initial target group of 1,797 (26% or 1 out of 4) children in ICDD/ICPD and in IMSCC who had to leave the institutions as part of the Childhood for All Project have really left them.**¹⁴⁵

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

The first six years of deinstitutionalisation confirmed a steady trend of reducing the number of children in institutions. By June 2016, nearly two-thirds of children institutions (91 of 137) were closed down. **The total number of children and youth in specialised institutions decreased from 7,587 in 2010 to 1,232 or nearly six times.** By 1 June 2016, 2,355 children were in foster care, those living in residential care were 3,351, 4,755 children were adopted, 9,390 children were reintegrated in their biological families and 5,927 children were placed in foster care with families of relatives.¹⁴⁶

¹⁴² 1,144 children and young people in 23 ICDD and 1 ICPD at the end of 2013. The quoted information is provided by SACP on 27 January 2015 on BHC request for access to public information No. 14-00-1/12.01.2015. Two ICDD and one ICPD were closed in 2014: ICDD in Targovishte, the ICDD in Kermen and the ICPD in Lukovit.

¹⁴³ SACP, database of the Childhood for All Project.

¹⁴⁴ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2014* (2015), p. 80.

¹⁴⁵ *Ibid*, p. 80.

¹⁴⁶ Government of Bulgaria, *Updated action plan for implementation of the National Strategy "Vision for deinstitutionalisation of children in Bulgaria"*, October 2016, <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=601>.

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

With a decision 208 of **10 August 2015** the Council of Ministers **regulated the residential type of service for children in need of permanent medical care and provided for the mechanisms for closure of eight institutions for medico-social care for children**. A total of 208 children were assessed, 408 staff members were trained and supervised, 239 staff members were trained to work in the new services under a Chance for Happy Childhood Project. In the course of the project, 181 children were reintegrated in families. At the same time, the total number of children placed in these eight institutions was 342. As of October 2015, the eight institutions had been closed down.¹⁴⁷ Under the same project **eight complexes for “innovative integrated health and social services for children aged 0 to 3” were opened**, that include: seven family consultation centres, three foster care centres, five early intervention centres, three centres for child mental development, eight day care centres, two Mother and Baby Units, eight Mother and Child Health Centres, nine specialised residential care centres for children aged up to seven who need constant medical care.¹⁴⁸

During the period January 2012 - 30 September 2015, 434 children aged up to 3, **including 149 children with disabilities**, were placed in family and close to family environment. Out of them, 11 were placed in other institutions, 159 children were adopted, 144 children were placed in foster families, 89 children were reintegrated in biological families, 9 children were placed in relatives' families and 33 children were placed in family-type accommodation centres and 27 of whom were placed in family-type accommodation centres for children with disabilities.¹⁴⁹ However, the National Network for Children (NGO) comments in its 2016 report that the newly established services “are still not statutory regulated and there are no activities for ensuring their sustainability and financing mechanisms. This was the reason for the newly created complexes providing services to be forced to suspend their work”.¹⁵⁰ However, **no plans have been identified about the remaining 17 institutions for medico-social care for children aged 0 to 3 in the country**.

As of 1 January 2017, Bulgaria has **284 family-type accommodation centres of children and young people (FTACs)** throughout the country, **134 of which, or nearly half of all centres, host children and youth with disabilities**, including seven centres for family-type accommodation for children who need constant medical care. **According to expert assessments, nearly a third of the children with mental disabilities placed at FTACs exhibit risk behaviours**. Some of the children with harmful behaviour also have multiple disabilities and communicate only non-verbally. These factors turn them into a serious challenge for the staff providing the services who often lack the necessary

¹⁴⁷ Social Assistance Agency, *2015 Annual Report*, p. 40.

¹⁴⁸ Ministry of Healthcare, *Report about the Implementation of Direction Family Project*, p. 7, available at: http://www.mh.government.bg/media/filer_public/2016/04/06/izpalnenie-na-proekt-posoka-semeystvo.pdf.

¹⁴⁹ Ministry of Healthcare, *Report about the Implementation of Direction Family Project*, p. 12.

¹⁵⁰ National Network for Children, *2016 Report Card*, p. 29, available in English at: http://nmd.bg/wp-content/uploads/2016/06/EN_Belejnik-2016_web.pdf.

qualification and choose the easy way out of the crisis by adhering to stereotypes and redundant common practices: **fixation (limitation) of movements, isolation or prescribed medical treatment to suppress behaviour despite the absence of a mental disability diagnosis**. In the summer of 2016 at a day centre for weekly care (DCWK) in the town of Pazardzhik the case was observed of a boy whose harming behaviour was “handled” through immobilisation by means of tying back the arms and establishing “control” by an older boy, also a client of the service, whom staff had assigned the task “to hold the arms of the aggressive boy to prevent him from hitting his head and face”. On the day of the visit by BHC researchers, the two boys were lying next to each other in the common bedroom with the older boy holding the arms of the younger one. The instances of provocative behaviour grow more serious following relocation into the community, namely due to a past of living in isolation, experts have argued. The full capacity of day centres for children with disabilities has been reached according to data provided by the municipalities, members of the National Association of Municipalities in the Republic of Bulgaria. Alternative services have not been made available everywhere. At the same time, FTACs do not necessarily provide transportation. As a result, in 2016 access to services supporting children with multiple disabilities remained limited. According to an assessment by LUMOS, 67% of the children at FTACs continue to live in isolation.¹⁵¹

Cases of violence at FTACs

In 2016, **several cases of negligence, harassment and violence against children at FTACs became the subject of prosecutor investigations**. In March 2016, the Ombudsman filed an alert with the Prosecutor General stating that children at the FTAC in the village of Dren were being subjected to violence and psychological harassment. The Ombudsman pointed out that, “the detention of children in institutions is in direct violation of their rights”. In July 2016, the Bulgarian State Agency for Child Protection inspected an incident at FTAC in the town of Vidin, which resulted in bruises on the victim’s body. According to a surgeon, the victim – a boy – had suffered a superficial head injury, hematoma indications in the area of the left cheek, and bruising in the left hand area. In August 2016, the Regional Prosecutor’s Office in Shumen ordered an inspection at a FTAC in the town of Shumen to address the case of physical harassment of four children by an educator and employees of the security company. In July, the State Agency for Child Protection performed an inspection following a case of violence alert at another FTAC in Shumen. In a video recording aired in a news broadcast by national TV channel Nova Television, an employee at the centre addressed a child by calling them “an animal” and went on to add, “I am going to kill you”. A former educator claimed that pushing, rude language, and kicking with a slipper were among the practices applied at the service.¹⁵²

¹⁵¹ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), p. 143.

¹⁵² *Ibid*, p. 143.

11. ILL-TREATMENT OF MIGRANTS, ARBITRARY DETENTION

Since 2014, the number of migrants entering Bulgaria has increased. For most of them Bulgaria is a transit country on their way to Western Europe. Those who stay in Bulgaria face serious difficulties in dealing with the discriminatory attitudes of authorities and of private individuals and groups. Since 1994, BHC has maintained a programme for legal assistance of asylum seekers and refugees. BHC has access to the reception centres, immigration detention facilities and detention centres at the borders. Since 2014, the organisation has received **numerous complaints from migrants of bias-motivated physical abuse, robberies and insults by border police and other law enforcement officials**. Most recently, in the period May-September 2016 BHC received 33 such allegations affecting more than 600 persons who had asked for international protection.¹⁵³ The majority of received complaints (80%) concerned the **seizing of cash, valuables or even food that migrants carried, without issuance of a protocol**, upon their detention by the Bulgarian police authorities. There were reports about inappropriate treatment by the police: **using rude language, setting personal belongings on fire and strip searches**. A significant share of the complaints by asylum seekers (around 45%) concern **physical violence, including knocking to the ground, kicking, beating people with batons and in one case - a handgun grip**. In six cases, police dogs were used during the arrest for intimidation, which resulted in one case of a dog bite. In several other cases the police officers used warning shots (shooting in the air). On one such occasion, on 15 October 2016, the Afghan man Ziaullah Wafa, 19-years-old, was killed after a border police officer allegedly used a warning shot and the bullet ricocheted, killing Wafa. In June 2016, the Burgas Regional Prosecutor's Office discontinued the investigation because the result of the police officer's conduct was found to be coincidental and could not have been foreseen. In the last several years, BHC, Amnesty International, Human Rights Watch and other international organisations have criticised the Bulgarian government for pushing back asylum seekers through unlawful use of force and firearms.¹⁵⁴

In addition to law enforcement officers, **private vigilante groups "hunting" for migrants near the Bulgarian-Turkish border have physically abused, detained and robbed migrants on numerous occasions**. In April 2016, the Prime Minister Boyko Borisov talked with one such group, thanked them and praised their activities.¹⁵⁵ Although criminal investigations were instigated and charges were brought against members of some of these vigilante groups, none have been convicted. In March

¹⁵³ Bulgarian Helsinki Committee, *BHC calls on authorities to investigate reports of systemic human rights violations regarding refugee access to territory and international protection*, 18 November 2016, available at: <http://www.bghelsinki.org/en/news/press/single/bhc-calls-authorities-investigate-reports-systemic-human-rights-violations-regarding-refugee-access-territory-and-international-protection/>.

¹⁵⁴ Human Rights Watch, *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, 28 April 2014; Human Rights Watch, *Bulgaria: Asylum Seekers Summarily Expelled*, 29 April 2014; Human Rights Watch, *Bulgaria: Halt Summary Returns, Beatings, Robbery of Asylum Seekers*, 20 January 2016; Amnesty International, *Bulgaria must ensure independent and impartial investigation into death of Afghan asylum-seeker shot at Bulgarian-Turkish border*, 16 October 2015; Amnesty International, *Bulgaria: It's time to address the allegations of abuse of refugees and migrants by the police*, 11 December 2015.

¹⁵⁵ For more details, see the letter to the Prosecutor General by a group of citizens available on the BHC web site: <http://www.bghelsinki.org/en/novini/press/single/20160414-crime-report-vigilante-patrols/>.

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

12. CONDITIONS IN PLACES FOR DEPRIVATION OF LIBERTY AND PRE-TRIAL DETENTION

12.1. Prisons

On 27 January 2015, the European Court of Human Rights delivered a pilot judgement in the case of *Neshkov and Others v. Bulgaria*.¹⁵⁶ The pilot procedure referred to the living conditions at several Bulgarian prisons. The applicants, five inmates serving their sentences in different prisons, claimed that **the combination of overcrowding, bad hygiene and inadequate access to medical care had turned their detention into inhuman and degrading treatment** in violation of Article 3 of the *European Convention on Human Rights*. The Court agreed with them and held that such a violation had indeed taken place in all prisons in which the applicants were serving their sentences. In addition, the Court held **that the applicants did not have an effective domestic remedy under Article 13** of the *Convention*, as the existing mechanism under the *Responsibility of the State and the Municipalities for Damages Act* allows inmates to only receive compensation for damages but only if they have managed to prove that the actions of the competent authorities were unlawful under national legislation. Therefore, when reviewing the cases, the domestic courts refuse to evaluate the conditions of detention in line with international standards, which prohibit inhuman and degrading treatment. The Court also noted that the **Bulgarian legislation lacks an effective prevention mechanism** that would allow inmates to request transfer to conditions, which are not inhuman and degrading. Initiating the pilot procedure, ECtHR noted that since 2004 it had found a breach of Article 3 of the *Convention* on account of poor conditions in detention facilities in 25 cases, and that some 40 complaints against Bulgaria with a similar subject were still pending. With regard to the violation of Article 3, the Court abstained from specifying measures and timeframes that Bulgaria should adopt to make the situation at the detention facilities consistent with the *Convention's* standards. It declared that this could happen either by an overhaul of the existing prisons or by the construction of new ones. With regard to the violation of Article 13, however, **it specified a deadline: 18 months from the entry of the judgement in force, within which Bulgaria should initiate legislative changes to introduce an effective prevention and compensation remedy against inhuman and degrading conditions of detention**. BHC took part in the proceedings on this pilot case by submitting a third-party submission and providing legal assistance to one of the applicants.

On 26 March 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made a **public statement** concerning Bulgaria. It was the

¹⁵⁶ ECtHR, *Neshkov and Others v. Bulgaria*, Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, judgment of 27 January 2015.

seventh public statement in CPT's post-1989 history and the first in relation to Bulgaria. The public statement was made as, according to the Committee, the findings and the recommendations in its reports had either been ignored or met with denial, and because "very little progress, if any" had been made in implementing the CPT recommendations in the past years. The public statement focused on two issues: ill-treatment of detainees by police officers and **the living conditions in prisons and investigation detention facilities** run by the Ministry of Justice.

In the summer of 2016, BHC visited the prisons in the cities of Burgas, Varna, Lovech, Sofia, Stara Zagora and Pleven, as well as the prison dormitories in the towns of Troyan and Cherna Gora – all related to *Neshkov and Others v. Bulgaria*. The main focus of the observations was to establish what actions had been taken to document and investigate **incidents of violence** between inmates and of violence committed against inmates by prison staff; to document **the physical living conditions** (living area, access to food and water, hygiene and sanitation) and access to **medical services**; to monitor the conditions of the **solitary confinement cells** where inmates serve out their punishments. The researchers reviewed documentation, observed the various quarters in the prison facilities, and carried out interviews with the administrative staff, as well as with inmates. Below are the summaries of the **main findings of the monitoring**. Very detailed information is available in the *Information from the Bulgarian Helsinki Committee about the measures taken by the Ministry of Justice under Neshkov case implementation*, submitted to the Council of Europe and the Committee for the Prevention of Torture in September 2016.¹⁵⁷

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

In 2016, the Bulgarian Ministry of Justice, on behalf of the Bulgarian Government, notified the Committee of Ministers of the Council of Europe that the Deputy Minister of Justice had issued an **ordinance requiring that all prison facilities should introduce registers to document the use of force and auxiliary means, as well as registers to document injuries suffered by inmates**. This ordinance (which was issued under number *JIC-04-1416/13.10.2015* and is henceforth mentioned as *the Ordinance*), was not made available to the general public, however, BHC was able to secure access to it by means of submitting a written request for access to public information to the Ministry of Justice. In its reply the Ministry of Justice stated that the Ordinance had been sent out to all prison facilities via regular and electronic mail.¹⁵⁸

According to the Ministry, a register for documenting injuries suffered by inmates has been introduced in all prison facilities along with a register for documenting the use of force and auxiliary means. Among other things, the Ordinance requires that by the 5th day of each month at the latest all prison wardens should submit a detailed report to the Director of the Execution of Punishments Department (EPD) at the Ministry of Justice containing information about all the cases of ill-treatment recorded the previous month. The information contained in these reports shall be analysed by the Director of the Execution of Punishments Department every three months and the summarised data shall be submitted to the Deputy Minister of Justice. In the period **13 October 2015**

¹⁵⁷ Bulgarian Helsinki Committee, *Information from the Bulgarian Helsinki Committee about the measures taken by the Ministry of Justice under Neshkov case implementation*, September 2016, available in English at: http://www.bghelsinki.org/media/uploads/neshkov_information_bhc.pdf.

¹⁵⁸ Ministry of Justice, Letter 66-00-85/21 June 2016.

– **13 January 2016** the Ministry of Justice received information about **22 incidents of use of force and auxiliary means by prison officers in response to inmate-on-inmate assaults or to inmate assaults on prison staff**. During the same period, the reviewed **registers for traumatic injuries suffered by inmates** contain records of **34 incidents, 24 of which were incidents of inmate-on-inmate assault and 10 were incidents of self-inflicted injuries**. All of these incidents have been reported to the regional prosecutors' offices.

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

Registers for traumatic injuries suffered by inmates

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

The incidents of trauma received by inmates as a result of the use of force and auxiliary means by prison staff are not always marked in the designated register and in the rare occasion when they do get recorded into the register, **they often lack details about the incident**.

The data on the traumatic injuries suffered by inmates, as well as on the use of force and auxiliary means that was provided by the Ministry of Justice is markedly different from the data collected as a result of the BHC monitoring: there is a stark discrepancy between these figures, especially considering the fact that the BHC research only covered a partial period and these figures were collected from only six prisons and two prison dormitories. **The total number of documented instances of ill-treatment and traumatic injuries in the eight institutions visited by the researchers was 218 (* or 261, depending on the interpretation of the data from the Sofia prison); the data provided by the prison administration indicates that in 18 of these instances the perpetrators were prison staff who used force and auxiliary means.**

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

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

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

12.1.2. Personal and legal correspondence

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

12.1.3. Physical conditions

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

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

12.1.4. Access to food and water in prison facilities

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

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

12.1.5. Health care services

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

12.2 Legislative amendments to prevent torture, inhuman and degrading treatment

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

omissions or circumstances, which diminish human dignity or arouse a feeling of fear, vulnerability or inferiority”.

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

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

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

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

13. DEVELOPMENTS IN THE INVESTIGATIONS OF CASES OF DEATHS AND INJURIES OF CHILDREN WITH DISABILITIES IN INSTITUTIONS

In 2010, the Supreme Cassation Prosecutor's Office and the regional offices of several other authorities - the Ministry of Healthcare, Ministry of Education, Youth and Science, the State Agency for Child Protection, the Ministry of Labour and Social Policy and the Bulgarian Helsinki Committee (NGO) carried out joint, on-the-spot inspections in **all institutions for children with intellectual disabilities. The inspections established 238 child deaths between 2000 and 2010. In the opinion of BHC experts, at least three quarters of the deaths had been avoidable: 31 children died of starvation (systematic malnutrition); 84 from neglect; 13 due to poor hygiene; six in accidents such as hypothermia, drowning, suffocation; 36 died because they were bedridden; and two deaths were caused by violence.** Moreover, during the NGO monitoring it was established that violence, binding and treatment with harmful drugs continue to be widespread practices in care homes for disabled children in Bulgaria. At the time of the joint visits, **there were 103 children, who were malnourished and at a real risk of death by starvation in institutions.**¹⁵⁹

On 1 June 2011, BHC and the Deputy Prosecutor General in Bulgaria held a press conference, "Care Homes for Children Eight Months Later: Substantial Deficits, Significant Attainments – Questionable Justice", to announce the results of the **investigations of death and injury cases in institutions for children with intellectual and psychosocial disabilities.**¹⁶⁰ During the press conference, the then Deputy Prosecutor General, Galina Toneva, announced that the Prosecutor's office initiated 248 pre-trial proceedings on death and injury cases. The bulk of the proceedings are for "unknown perpetrators" (meaning that the prosecutors were not able to estimate who the actual perpetrators were). According to BHC, "the prosecutors have issued a number of investigation cases on the failure to treat a child's abscess; to provide specialised dental care to a child; to a child abused by means of ill appointed tranquilisers; cases of sexual abuse, hypotrophy and pneumonia-related deaths; and bodily damage". BHC highlighted that over 60% of the notified prosecutorial decrees were subject to further investigations. **At present, the Prosecutor's office has terminated all pre-trial proceedings.** In 2012, **BHC filed the first applications to the European Court of Human Rights regarding three of the most severe cases.**¹⁶¹ By the end of 2016, BHC had filed five applications against Bulgaria at the European Court of Human Rights in Strasbourg on the grounds of inaction resulting in severe consequences or death and the lack of effective follow-up investigation of the circumstances. The cases of these children were undertaken by BHC having observed the inaction of the Bulgarian

¹⁵⁹ Bulgarian Helsinki Committee, *Joint investigation between the BHC and the Prosecutor's Office carried out in all homes for mentally disabled children in Bulgaria (Съвместни проверки на БХК и Прокуратурата в домовете за деца с умствени увреждания в България)* (2010), available in English at: <http://www.bghelsinki.org/en/news/press/single/press-release-investigations-childrens-homes-8-months-later/>.

¹⁶⁰ *Ibid.*

¹⁶¹ Bulgarian Helsinki Committee, Application Number 35653/12, available in Bulgarian at: http://www.bghelsinki.org/media/uploads/files/2012-08-06_application.pdf; Bulgarian Helsinki Committee, Application Number 79879/12, available in Bulgarian at: http://www.bghelsinki.org/media/uploads/application_echr_b.s..pdf.

prosecution and in the expectation of a breakthrough in the case law of ECtHR. The objective has been to achieve recognition of the right of human rights organisations to file cases on behalf of deceased individuals deprived of any institutional, social or humane protection, and to ensure justice. **At this point, however, ECtHR has refused – with considerably deficient argumentation – to provide post mortem protection to two children whose cases were addressed in first ruled cases in July 2016.**

On 28 April 2015, BHC submitted a report to the chairperson of the State Agency for Child Protection urging the agency to open an investigation into the **extremely high number (around 300) of deaths of children established in the institutions for medico-social care for children (IMSCC), children from 0-3 years of age who are deprived of parental care and/or children with disabilities.**¹⁶² **As of April 2017, no information was received about investigations.** BHC inspections in 20 (out of 28) IMSCC in 2013-2014 revealed that the entrance to these institutions is still wide open as **children are placed in them due to both family poverty and disabilities.** The share of children with disabilities placed in IMSCC is still growing: the percentage of children with disabilities going through these institutions increased from 39.74% in 2013 to 45.18% in 2014.¹⁶³ However, researchers found that a number of children in these institutions are in shocking physical condition, indicating an inability of the institutions to properly address the needs of this growing population. The identified problems were: **children's lack of contact with the outside world; lack of access to a person of trust; lack of respiratory rehabilitation for bedridden children leading to death cases;**¹⁶⁴ **the children with the most severe disabilities having significant psychomotor retardation, delayed growth in height and weight, adynamia, forced lying position accompanied by pressure injuries, deformations of the musculoskeletal system, joint contractures and muscle hypertrophy.**¹⁶⁵

680 child deaths – no monitoring

At present, Bulgaria does not practise carry out monitoring on death cases at child institutions or other forms of childcare. Some 150 children and young people died during the Childhood for All Project between 2010 and 2015. In 2015, BHC received information from the directors of 29 institutions for medico-social care for children about the deaths of 292 children aged 0 to 7 years in the period 1 June 2010 - 31 December 2014. Following an alert to the State Agency for Child Protection by BHC, the Agency's chairperson filed a request with the Supreme Prosecutor's Office of Cassation to perform an investigation. As of 27 January 2017, the Agency had received no follow-up information. In the course of its monitoring in 2014, BHC established that the number of deaths at IMSCC had increased slightly rising from 49 in 2010 up to 55 in 2014. However, as the total number

¹⁶² Bulgarian Helsinki Committee, *BHC Calls on the State Agency for Child Protection to Investigate the Deaths of 292 Children in Institutions between June 2010 and December 2014*, press release, 29 April 2015, available in Bulgarian at: <http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrti-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

¹⁶³ Information provided to BHC on 5 February 2015 by the Ministry of Healthcare. According to the Ministry, out of the 925 children placed in 29 IMSCC, 604 or 65,2% were children with disabilities.

¹⁶⁴ Bulgarian Helsinki Committee, *BHC Calls on the State Agency for Child Protection to Investigate the Deaths of 292 Children in Institutions between June 2010 and December 2014*, press release, 29 April 2015.

¹⁶⁵ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2014* (2015), pp. 78-86.

of children at IMSCC had decreased, these figures indicated a disturbing increase in the numbers going up from 10 babies in 1,000 children in institutions in 2010 to 20 in 1,000 in 2014.

14. ADMISSIBILITY OF SELF-INCRIMINATING STATEMENTS/CONFESSIONS EXTRACTED BY POLICE TORTURE AND VIOLENCE AND THEIR EVIDENTIAL VALUE

Persons who are formally or *de facto* taken into police custody, may be questioned orally and/or may be instructed to give written statements. Formally, such statements do not have evidential value in criminal proceedings and should not reach the court. The results of the criminal case files study, conducted by BHC between November 2016 and February 2017, however, provide strong evidence to the contrary. It was established that statements, including confessions, given by suspected persons prior to the initiation of the criminal proceedings or during the criminal proceedings but without following the prescribed legal procedure, are presented to the court by the prosecutor and are then included in the court case file and remain there for the whole duration of the criminal proceedings. The court does not examine the circumstances under which statements are taken, whether suggestive or coerced police conduct was used, nor the use of procedural safeguards effective for securing the privilege against self-incrimination of the persons questioned. According to the law, custodial interrogations should be conducted in specially equipped premises at police departments only and are recorded by audio-visual means. In practice, however, this does not happen.¹⁶⁶

14.1. Admissibility of police officers as witnesses in criminal trials, testifying to the defendants' self-incriminating confessions

Interrogation of police officers in their capacity of witnesses, who have previously obtained self-incriminating confessions from a suspect, held in police custody prior to the formal initiation of criminal proceedings, is a technique for collection of evidence in criminal proceedings, commonly used in Bulgaria. The Supreme Court of Cassation' jurisprudence in terms of the admissibility of such evidences is inconsistent.

In Decision No. 486 from 10 March 2015,¹⁶⁷ the Supreme Court of Cassation states that pursuant to Article 118(1) of the *Criminal Procedure Code*, participants in the pre-trial or trial criminal proceedings could not have the status of witnesses in the same criminal proceedings, save for the cases expressly provided for by the same provision. The Supreme Court of Cassation emphasizes that

¹⁶⁶ Opinion shared by the participants in the focus group with lawyers conducted in Shumen on 3 February 2017 under the *Strengthening procedural rights in criminal proceedings: effective implementation of the right to a lawyer/legal aid under the Stockholm Programme* EU co-funded project.

¹⁶⁷ Bulgaria, Supreme Court of Cassation, Decision No. 486 from 10 March 2015 on case No. 1406/2014.

investigation activities of police officers are governed by the *Ministry of Interior Act* and thus statements of detained suspects are “merely preliminary statements” taken “with the purpose of receiving information, necessary for the initiation of the investigation and for providing direction of the investigation, for the development of investigative hypothesis and for facilitating the work on police tips. Therefore, the court advances the argument that although police officers might have been involved in the investigation of a crime and in the process of questioning a detained suspect, who has subsequently been formally accused of having committed the crime, they lack the status of participants in criminal proceedings *sensu stricto*. It concludes that police officers should be considered competent to testify as witnesses on matters occurring during their investigative work, including on self-incriminating statements given by the detained suspected persons.

The principle admissibility of such evidence is challenged in other group of cases decided by the Supreme Court of Cassation. Decision No. 391 of 25 October 2013,¹⁶⁸ for example, excludes testimonies of police officers, reproducing self-incriminating confessions of a suspect, made during “a preliminary talk” as being inadmissible for failure to follow the prescribed procedure for evidence gathering. It points out that pursuant to Article 115(1), the accused person gives explanations, including self-incriminating confessions, only verbally and directly before the competent authority.¹⁶⁹ According to the court, this procedure is established to guarantee the right to defence of the accused persons, to ensure the legality of the interrogation and to protect against inappropriate evidence-gathering activities. Hence, it could not be circumscribed by validating testimonies of a witness, concerning another interrogation of the accused, not made in compliance with Article 115(1) of the *Criminal Procedure Code*. Further, in Decision No. 299 from 21 July 2012,¹⁷⁰ the Supreme Court of Cassation states that police officers are permitted to obtain witness status, only when their previous participation in the criminal proceedings has been in a capacity related to one or more of the evidence-gathering activities, exhaustively listed in Article 118(1) of the *Criminal Procedure Code*. This list, however, does not mention interrogation of the accused person. On this ground, the court renders evidence gathered by interrogation of a police officer, who testifies to the defendant’s self-incriminating statements, made during “preliminary talk” to circumscribe procedural requirements of *Criminal Procedure Code* and thus to be inadmissible.¹⁷¹

¹⁶⁸ Bulgaria, Supreme Court of Cassation, Decision No. 391 from 25 October 2013 on case No. 1220/2013.

¹⁶⁹ Bulgaria, *Criminal Procedure Code*, Art. 115(1).

¹⁷⁰ Bulgaria, Supreme Court of Cassation, Decision No. 299 from 21 July 2012 on case No.933/2012.

¹⁷¹ Submission of the Bulgarian Helsinki Committee concerning *Mitev v. Bulgaria*, Application No. 34779/09.

15. COMBATING TERRORISM ACT

In December 2016, the National Assembly adopted the *Combating Terrorism Act*. The new legislation provides for various preventive measures some of which may affect in an unjustified way the privacy, right to freedom of movement and other human rights of individuals deemed by law enforcement authorities under reasonable assumption to “constitute a terrorist threat”. Persons who do not pose such threat may also be affected by curtailing of their rights.

The measures include, among other things, the prohibition to change the address of one’s residence, to leave the country without permission, visit certain places, contact persons, or the requirement to appear at the regional office of the Ministry of Interior to sign in front of a police officer. Orders to introduce such measures are subject to immediate implementation and may be appealed only before the Supreme Administrative Court. However, the appeal will not discontinue the implementation of the measure. If the court confirms the measure, a new appeal may be filed no sooner than three months afterwards. Presence in person at the Supreme Administrative Court is not required for the case to be processed. In reality, in the situation of most individuals based outside Sofia, the proceedings will be carried out in their absence due to transport costs or imposed prohibition of movement.

Where there is evidence of an immediate terrorist threat or a terrorist act is already underway, the law permits antiterrorist operations to be launched without declaring a state of emergency. In the course of such operations, law enforcement authorities will be allowed severe curtailment of freedoms, including **detention of individuals to verify their personal identity without a set term, access to vehicles owned by private organisations without limitation, the use or interception of communications regardless of the necessity or proportionality of the measure, unlimited access to residential or other premises, termination of any public events including religious gatherings regardless of the necessity or proportionality of the measure.**

The law stipulates that in the event of a terrorist act an emergency situation within the full state territory or a section of it may be declared with a decision by the National Assembly or with a presidential decree. The law sets no limitation period beyond which the emergency situation may not be extended nor is it restricted only to situations that pose a threat to the existence of the nation. Throughout the course of the emergency situation, the authorities enjoy broad powers including the right to prohibit holding any meetings, public demonstrations or manifestations, regardless of the necessity or proportionality of the prohibition. Furthermore, they will be granted unlimited access to all electronic services provided by companies in the communications sector regardless of the necessity or proportionality of the possible intervention with respect to communication among citizens. Similarly, the authorities may demand a temporary termination in the operation of electronic communication networks.¹⁷²

¹⁷² Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), pp. 47-48.

ANNEX 1

Information provided by the Regional Departments of the Ministry of Interior to BHC about the unlawful use of force and auxiliary means by police officers during the period 15 September 2015 - 15 May 2016

Regional Department	Number of complaints/cases of use of force and auxiliary means	Number and type of investigations	Outcome of the investigations
Ruse	none	none	none
Lovech	none	none	none
Pazardzhik	4 in total – three cases of force (2 in Pazardzhik, one in Panagyurishte), one case of use of auxiliary means in Pazardzhik	administrative	no violation was found
Silistra	1 signal of unlawful use of force from Dulovo	administrative	no violation was found, case file was sent to the District Prosecution Office in Dulovo
Sliven	1 signal from Sliven, 1 signal from Tvurdica	administrative	no violation was found
Veliko Turnovo	1 signal for unlawful use of force	administrative	no violation was found, case file was sent to the Regional Prosecution Office
Turgovishte	1 signal for use of threat with a gun for giving explanations	administrative	no violation was found
Kurdzhali	none	none	none
Smolyan	none	none	none
Varna	3 signals	administrative	no violation was found
Sofia	11 signals	administrative	1 violation was found, performed by three police officers and punishments “prohibition of raise in position for 1 year” and reprimand were imposed
Pleven	3 signals	administrative	Case file in one case is sent to the Inspectorate

			of the Ministry of Interior, the other 2 cases were sent to the District Prosecution Office in Pleven
Yambol	none	none	none
Razgrad	none	none	none
Burgas	6 signals	administrative	no violation was found
Montana	none	none	none
Dobrich	6 signals	administrative	no violation was found
Blagoevgrad	none	none	none
Kyustendil	none	none	none
Shumen	none	none	none
Plovdiv	7 signals	administrative	In 6 cases violation was not found, one investigation is still pending
Vidin	none	none	none
Vraca	none	none	none
Gabrovo	none	none	none
Pernik	none	none	none
Haskovo	2 signals	administrative	1 proceeding is still pending, 1 investigation proceeding has finished and no violation was found
Stara Zagora	none	none	none
Total	46 signals	12 administrative proceedings	1 violation was found

ANNEX 2

Court statistics on cases of alleged crimes against the national and racial equality (Articles 162 – 166 of the *Criminal Code*) for the period of January 2008 – December 2014 provided by the Government

Chapter III of the <i>Criminal Code</i> Crimes against the rights of citizens	New cases	Pre-trial proceedings submitted to court	Persons submitted to court	Convicted persons with enforced court decisions	Acquitted persons with enforced court decisions
1					
Section I					
Crimes against the national and racial equality					
Art. 162 – crimes against national and racial equality	7	1	1	1	0
Art. 163 - against national and racial equality through participation in a group	0	0	0	0	0
Art. 164 - religious hatred	0	1	1	2	0
Section II					
Crimes against religions					
Art. 165 - against religious freedoms	0	0	0	0	0
Art. 166 - religious activities against the State	0	0	0	0	0
Total for 2008	7	2	2	3	0
Section I					
Crimes against the national and racial equality					
Art. 162	10	3	3	1	0
Art. 163	0	0	0	0	0
Art. 164	2	0	0	1	0
Section II					
Crimes against religions					
Art. 165	0	0	0	0	0
Art. 166	2	0	0	0	0
Total for 2009	14	3	3	2	0

Section I					
Crimes against the national and racial equality					
Art. 162	4	1	1	1	0
Art. 163	0	0	0	0	0
Art. 164	17	1	1	1	0
*Art. 164(1)(4) (through electronic media)	0	0	0	0	0
Section II					
Crimes against religions					
Art. 165	1	0	0	0	0
Art. 166	1	0	0	2	0
Total for 2010	23	2	2	4	0
Section I					
Crimes against the national and racial equality					
Art. 162	21	2	3	1	1
Art. 163	4	0	0	0	0
Art. 164	15	1	5	5	1
* Art. 164(1)(4)	0	0	0	0	0
Section II					
Crimes against religions					
Art. 165	0	6	6	6	0
Art. 166	0	0	0	0	0
Total for 2011	40	9	14	12	2
Section I					
Crimes against the national and racial equality					
Art. 162	7	2	3	3	0
Art. 163	0	0	0	0	0
Art. 164	14	0	0	0	0
*Art. 164(1)(4)	0	0	0	0	0
Section II					
Crimes against religions					
Art. 165	0	0	0	1	0
Art. 166	0	0	0	0	0
Total for 2012	21	2	3	4	0

Section I					
Crimes against the national and racial equality					
Art. 162	13	3	4	3	0
Art. 163	0	0	0	0	0
Art. 164	9	0	0	0	0
*Art. 164(1)(4)	0	0	0	0	0
Section II					
Crimes against religions					
Art. 165	2	0	0	0	0
Art. 166	0	0	0	0	0
Total for 2013	24	3	4	3	0
Section I					
Crimes against the national and racial equality					
Art. 162	11	1	2	1	0
Art. 163	0	0	0	0	0
Art. 164	16	2	3	1	0
*Art. 164(1)(4)	0	0	0	0	0
Section II					
Crimes against religions					
Art. 165	0	0	0	0	0
Art. 166	0	0	0	0	0
Total for 2014	27	3	5	2	0