HUMAN RIGHTS IN BULGARIA IN 2017

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

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Human Rights in Bulgaria in 2017

Sofia, April 2016

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1. Political Developments in Bulgaria in 2017

The year 2017 in Bulgaria started with the caretaker government appointed by the President of the Republic at the end of January, and with Professor Ognyan Gerdzhikov as Prime Minister. The principal task of that government was to organise the early parliamentary elections held on 26 March. Eleven political parties, nine coalitions and nine independent candidates were registered. Only five of them obtained enough votes for the National Assembly. The highest number of votes, but insufficient to form an autonomous government, were cast for the party that ruled prior to the dissolving of the National Assembly: Citizens for European Development of Bulgaria (known with its Bulgarian acronym GERB). The Bulgarian Socialist Party (BSP) came second. The other three parties and coalitions elected to Parliament were the United Patriots (UP) – a coalition of three ultranationalist parties, the Movement for Rights and Freedoms (MRF) and the newly-emerging *Volya* formation with unclear political profile.

Several months prior to the elections, the National Assembly introduced amendments to the Electoral Code that limited the number of the polling stations abroad to 35.[1] The amendment was introduced with the aim of undisguised discrimination: to create difficulties for the Bulgarian citizens in the Republic of Turkey and to reduce the relative weight of the vote from there, which is distributed predominantly between two political forces: the Movement for Rights and Freedoms and the new DOST Alliance (following the Bulgarian acronym of one of the two parties making up that coalition: Democrats for

1 See BHC (2017). *Human Rights in Bulgaria in 2016.* Sofia: Bulgarian Helsinki Committee, March 2017.

Responsibility, Freedom and Tolerance). However, these restrictions triggered intensive protests among the Bulgarian voters in the countries of Western Europe. In response, the National Assembly lifted that restriction at the end of October, but only for the Member States of the European Union. It remained for the non-EU countries, which affected above all voters in Turkey. Due to the fact that the polling stations there were reduced from 136 in 2014 to 35 in 2017, the votes cast were considerably fewer compared to the 2014 parliamentary elections.

The Bulgarian legislation also contains a number of other restrictions in violation of international standards. It denies voting rights to all individuals effectively deprived of liberty, as well as to all persons under judicial disability. Persons with dual citizenship may not run for Parliament. In July 2016, the European Court of Human Rights (ECtHR, the Court) found a violation of Article 3 of Protocol No. 1 of the European Convention on Human Rights (ECHR) in the case of *Kulinski and Sabev v. Bulgaria* on account of the ban on prisoners' voting rights. However, the National Assembly failed to make the necessary amendments to the Constitution and to the Electoral Code prior to the elections in March 2017 with a view to complying with that judgement. The ban introduced in the Electoral Code on conducting an election campaign in a language different from Bulgarian continued to be in force. In the course of the election campaign, one of the co-chairs of the DOST Alliance was fined for lobbying in Turkish.

During the election campaign several parties and coalitions used racist and xenophobic rhetoric. Election events organised by the United Patriots, GERB and *Volya* stereotyped and incited hatred for the Turkish and Roma minorities.[2] Many media and several ultranationalist formations launched a fierce campaign against the influence of Turkey on Bulgarian elections. That influence was understood in a narrow sense, as an opportunity for the Bulgarian citizens – ethnic Turks living in Turkey – to vote and as a chance for participation of the DOST Alliance in the elections. The DOST Alliance was repeatedly branded as Turkey's "fifth column" in Bulgaria. On 8 March, the Central Election Commission (CEC) announced an unprecedented decision and stopped the release of a video clip of that political coalition on account of the appearance of the Ambassador of Turkey to Bulgaria in it for about two seconds (without speaking). According to CEC, broadcasting of the video

2 OSCE/ODIHR, Republic of Bulgaria: Early Elections for National Assembly, 26 March 2017, p. 15, accessible at: http://www.osce.org/bg/odihr/elections/bulgaria/329976?download=true.

clip was in violation of Article 183, Paragraph 4 of the Electoral Code, which prohibits the use of "canvassing materials [...] that violate public decency." That decision was subsequently upheld by the Supreme Administrative Court. Representatives of foreign states had repeatedly appeared in the video clips of GERB during previous elections and had spoken in support of that party and its leader, but that had never been used as a pretext to ban the broadcasting of those video clips. During the week preceding the actual election day, UP representatives organised a blockade of the border to impede the entry of buses bringing Bulgarian citizens from Turkey and to prevent their voting. In the course of the blockade some of them used physical force against passengers. The violence was demonstrative, before the cameras of the TV companies present. Although Article 167, Paragraph 1 of the Criminal Code stipulates criminal liability for everyone who prevents somebody from exercising his/her right to vote or from being elected through the use of violence, fraud, threat or another illegal way, these acts did not result in any punishment for the perpetrators.

After the elections, on 4 May the government of GERB and United Patriots (UP), with GERB leader Boyko Borissov as Prime Minister, was formed and sworn in. Two of the UP leaders became Deputy Prime Ministers. For the first time after the beginning of the democratic transition, blatantly antidemocratic formations landed in the government, having entered politics through the use of anti-Roma, anti-migrant, anti-Semitic and homophobic rhetoric. In early July, Valeri Simeonov, President of the National Front for the Salvation of Bulgaria (NFSB), one of the three parties in the UP coalition, was appointed by the government Chairman of the National Council for Cooperation on Ethnic and Integration Issues, the only state institution working on the integration of minorities in Bulgaria. His party systematically incites to hatred and discrimination against certain ethnic and religious minorities. In December 2014, from the rostrum of the National Assembly, he qualified the Roma as "ferocious humanoids" and Roma mothers – as "women with the instinct of street bitches."[3] Simeonov's appointment as Chairman of that Council provoked additionally some of its members – representatives of minority NGOs – to leave. Many of the Council members left it in protest against its in*action* even back in 2013.[4] The *Roma-Lom* Foundation and the National Network of Health

3 BHC (2015). *Human Rights in Bulgaria in 2014* Sofia: Bulgarian Helsinki Committee, March 2015.

4 See: "13 Roma organisations left the Council on Ethnic Issues," 30 April 2013, accessible at: http://www.bghelsinki.org/bg/novini/bg/single/13-romski-organizacii-napusnaha-sveta-po-etnicheskite-vprosi/

Mediators left at the end of May 2017. In September, the biggest Jewish organisation *Shalom* suspended its participation in the work of the Council.

The formation of the GERB and UP government resulted in overall deterioration of the public climate connected with human rights, inter-ethnic and religious tolerance. The opportunities for conducting any policy for integration of the minorities and the refugees were strongly restricted. A number of restrictive legislative amendments concerning human rights were proposed and accepted by the end of 2017, some of which were subsequently revoked following international criticism.[5] Incitement to hatred, discrimination and violence against certain vulnerable groups in Bulgarian society continued with impunity. The cooperation of the authorities with NGOs and especially with those defending human rights deteriorated.

5 See below: **Independence of the Judiciary and Fair Trial**.

2. Cooperation with International and Local Human Rights Organisations

In 2017, two UN bodies – the Committee on the Elimination of Racial Discrimination (CERD) and the UN Committee against Torture (CAT) – examined the periodic reports of Bulgaria and made recommendations.[6]

Bulgaria's compliance with the judgements of the European Court of Human Rights continued to be a problem in 2017 as well. At the end of the year, the number of non-executed decisions monitored by the Committee of Ministers of the Council of Europe was smaller compared to the end of 2016: 262 against 291. However, most of the cases on which the monitoring was discontinued during the year were predominantly relatively trivial. Those concerning serious structural human rights problems in Bulgaria, with the exception of the groups of cases *Kitov and Dzhangozov* (excessive duration of the criminal proceedings), continued to be under enhanced supervision. Among the latter there are cases of death as a result of excessive use of force and firearms by the law enforcement bodies (the group of cases *Velikova v. Bulgaria*); the lack of mechanism for independent investigation of the actions of the Prosecutor General (*Kolevi v. Bulgaria*); inhuman and degrading conditions in places of detention (the group of cases *Kehayov v. Bulgaria*); lack of guarantees against arbitrary placing of persons with mental disorders in care facilities (the group of cases *Stanev v. Bulgaria*); expulsion and deportation of foreigners on the pretext of being a threat to national security (the group of cases *S.G. and Others v. Bulgaria*); telephone tapping by the law enforcement bodies (the group of cases *Association for European Integration and Human Rights and Ekimdzhiev v.*

6 See below: **Right to Life, Protection against Torture, Inhuman and Degrading Treatment** and **Protection against Discrimination.**

Bulgaria); forceful evictions from illegal housing (the group of cases *Yordanova and Others v. Bulgaria*); refusals to register citizen associations (the group of cases *United Macedonian Organisation Ilinden and Others v. Bulgaria*); ban on voting by persons in effective custody (*Kulinski and Sabev v. Bulgaria*). The above cases, as well as several other similar cases, reveal violations in almost the entire spectrum of rights guaranteed by the ECHR. Some of them, e.g., the group of cases *Velikova v. Bulgaria*, persisted since 2000, and the Bulgarian institutions stubbornly refused to undertake the measures ensuing from the judgements.

The cooperation of the Bulgarian institutions with the local human rights organisations degraded considerably in 2017. Due to lack of interest and initiatives in the sphere of the legislative guaranteeing of human rights, the ministries and the other state institutions did not invite human rights organisations to participate in working groups. BHC continued to seek opportunities to extend the agreements for monitoring the facilities for coercive placement of the Ministry of Health (MoH) and of the Ministry of Education and Science (MES). In 2017, for the first time BHC research teams were not admitted to visit schools for children with "antisocial behaviour" (SEBS and JDC) under MES supervision. That happened on the grounds of a "procedure for access" adopted in February 2017 by the paedagogical councils of these boarding schools, which prohibited "admission of representatives of the media and NGOs under any pretext" on the territory of the boarding schools without permission by the director and permission in writing from the MES. In April, BHC wrote a letter to the Minister of Education in the caretaker government at that time. In his answer of 27 April the Minister wrote that the new procedures "had been developed with methodological guidance and instructions provided by the State Agency for Child Protection (SACP)" and that they indeed authorised the directors "to refuse admission to persons who disrupt in any way the normal course of the school's activities." In a subsequent letter the SACP President confirmed the involvement of her institution in the blocking of human rights monitoring by BHC at JDC and SEBS.

Following the formation of the new GERB and UP government, BHC again turned in May to the Minister of Education for an opinion on the access to the special schools to be given to representatives of the organisation. With a letter of 2 June, the Deputy Minister of Education Denitsa Sacheva replied that contact with the children from these institutions had been denied to BHC researchers on the grounds that "demands for conducting conversations that

would direct the children with deviant behaviour back to circumstances that they had experienced in their past and would hurt their psychology additionally should be clearly defined and complied with." In the past the monitoring carried out by BHC and by other independent organisations found systematic cases of violence over children in JDC and SEBS by staff members of these institutions. MES admitted their existence only when they became public, which usually led to the closing down of the respective boarding school. During the many years of BHC monitoring of MES institutions there have never been any complaints that the organisation's researchers re-traumatised in their conversations the children in custody.

On 17 November, another Deputy Minister of Education and Science, Tanya Mihaylova, sent instructions to the heads of the regional education offices, indicating to them that visits by NGOs to all schools in Bulgaria were to be allowed only subject to permission by the Minister or by the head of the respective regional office of education, and that individual conversations with the students may take place only "after informed consent by the parents had been obtained" and moreover "in the presence of the school management or of the school psychologist/paedagogical consultant."

The Ministry of Health proved to be even less open to any requests for independent human rights monitoring to be conducted in its institutions in 2017. Between 27 January and 15 November BHC sent a total of 13 letters to different ministers that were in office during that period in connection with the renewal of the agreement for visits to state psychiatric hospitals and to the homes for medical and social care for children. The Ministers gave no answer whatsoever to some of the letters while they occupied that post, and replied to some of the others with refusal. The Ministry in its present composition rejected finally the last request by the BHC on 2 December with a brief letter from Deputy Minister Boyko Penkov, which reads: "at present the Ministry of Health deems it appropriate to refrain from support for the implementation of your initiative." This is the least motivated reply that the BHC has ever received in its activities over many years from a Bulgarian state institution.

3. Right to Life, Protection from Torture, Inhuman and Degrading Treatment

In 2017, the situation with the right to life, protection from torture, inhuman and degrading treatment marked a certain progress only in the aspect of improvement of the material conditions in some prisons and prison hostels.[7] No progress was reported with respect to the excessive use of force by police authorities. In December, the UN Committee against Torture disclosed alarming observations after examining the periodic report of Bulgaria under the Convention against Torture. They refer to the widespread ill treatment of persons detained in Bulgarian police precincts, especially from the Roma community, practised with impunity; the inhuman treatment of individuals held in custody in some places of detention; abuse of chemical agents for immobilisation, violence and inhuman conditions in a number of health care and social institutions; ill treatment and push backs of asylum seekers; return of migrants to countries in which their life and security would be threatened. In this connection CAT emphasised the regress in the cooperation between the authorities and the human rights NGOs with the refusals the latter to extend the agreements for monitoring educational, health care and social institutions. CAT is particularly concerned about the hundreds of deaths in the 2000–2010 period among children with intellectual disabilities, placed in institutions, on none of which responsibility had been assumed by the care givers. The Committee sent a special recommendation to the authorities to resume urgently the investigations on these cases and to report the results by 6 December 2018. The Committee also repeated some of its earlier recommendations where no progress in their implementation had been found. They

7 See below: **Conditions in places of detention.**

include the introduction of a special *corpus delicti* for torture in the Criminal Code and for abolishing the statute of limitation for that crime; criminalisation of domestic violence and intensifying the protection of the victims of domestic violence; revising the curricula of police officers with a view to introducing in them the standards of the Convention against Torture.[8]

During the period from December 2017 until January 2018 a BHC team conducted a survey among detainees from the prisons in Stara Zagora, Vratsa, Lovech and Pazardjik, whose pre-trial proceedings had started after 1 January 2016. Similar surveys in the same prisons among similar groups of detainees were conducted by BHC in earlier years as well. **Table 1** below presents the results of these surveys for the different years.

Table 1
Use of force by police officers over the years
% of respondents reporting use of force against them

	2010	2011	2012	2013	2014	2017
During detention	**26,2**	**27,1**	**24,6**	**22**	**23**	**25**
Inside the police precinct	**17,4**	**25,5**	**18**	**23,3**	**22,4**	**18**

The results show a slight increase compared to 2014 in the share of persons reporting ill treatment during their detention and a slight decrease of those who report that inside the police precinct. However, it should be pointed out that in 2017 there was a slight decline in the share of persons reporting that they had been detained in police precincts on account of the higher share among the convicted persons of perpetrators of crimes connected with driving motor vehicles, very few of whom were kept in custody at all prior to their final conviction. Therefore, on the whole, the above results reveal a persisting alarmingly high level of excessive use of force by police officers. It comprises both relatively severe forms like torture, and lighter beatings that do not leave permanent traces on the body of the victims.

Ill treatment by the police is not punished, as a rule. In February 2018, the website *Dnevnik* presented information on the disciplinary measures undertaken by the MoI on cases of unlawful arrest or use of force by police officials

8 CAT, *Concluding observations on the sixth periodic report of Bulgaria*, 15 December 2017, CAT/C/BGR/CO/6.

during the period from the beginning of 2017 until mid-2018. That information was obtained under the Access to Public Information Act. According to it, most of the disciplinary proceedings started following complaints by citizens. Only three police officers received disciplinary punishment: dismissal for unlawful arrest or use of force outside the cases permitted by law. Disciplinary sanctions were imposed in several remaining cases: censure, reprimand и promotion prohibition. Criminal proceedings against the perpetrators have not been reported in any of the cases.[9]

◆

In 2017 the ECtHR delivered several judgements in connection with the right to life and protection against torture, inhuman and degrading treatment. On 12 January, the Court announced its judgement on the case *Sarbyanova-Pashaliyska and Pashaliyska v. Bulgaria.* The applicants are the wife and daughter of Ivan Pashaliyski who was murdered on 2 June 2000 in an office in Sofia. The perpetrator was caught on the same day and on the next day he was charged with murder by an investigator. On 5 June 2000, the prosecutor brought murder charges against the same person. The pre-trial phase continued until November 2003. The case was returned four times for additional investigative measures that were specified by the prosecutor. During the trial phase both applicants were constituted as private prosecutors, and the second one – as civil claimant as well. The case ended with indictment at first instance in 2007, which was revoked a year later by the appellate court and the case was returned to the pre-trial phase with a view to introducing more precision in the indictment. In August 2008, the indictment was again submitted in court. The second applicant was constituted as civil claimant, but the Court refused to constitute both as private prosecutors. Following appeal, the refusal was revoked and both applicants exercised their rights of private prosecutors, repeating the questioning of the witnesses. The two applicants filed many requests for evidence to be gathered and for witnesses to be questioned. As the judge rapporteur on the case was elected Chairman of the Supreme Administrative Court, the case started anew. With a final judgement of 2 November 2015 the defendant was found guilty and sentenced to 12 years imprisonment, and the second applicant was granted compensation of approximately EUR 8,000 (EUR 8,000). The applicants complained

9 *"MoI fired three police officers for unlawful arrest and use of force for a year" Dnevnik*, 8 February 2018, accessible at: https://www.dnevnik.bg/bulgaria/2018/02/08/3125912_mvr_e_uvolnilo_trima_policai_za_nezakonen_arest_i/.

of excessive duration of the investigation during both the pre-trial and the trial phases. The ECtHR did not find violation of Article 2 of the Convention, because – according to it – the State had attained the goal of the investigation: the cause of death was established, as well as the person who had committed the murder, in spite of the duration of 15 years. The Court likewise dismissed the complaint of violation of Article 13 in connection with Article 2, because the domestic law provides effective means of protection in connection with their complaint about the duration of the criminal proceedings.

On 15 June 2017 ECtHR delivered a judgment on the case *Shalyavski and Others v. Bulgaria*. In 2011, the first applicant (who suffers from muscle dystrophy and needs assistance for most of his daily activities, which is provided either by the second applicant, his partner, or by his assistant, who is specially trained and in whose presence Mr Shalyavski feels secure), was stopped by police officers while travelling in his car driven by his assistant. After they were given orders to follow them to the police precinct, the assistant was detained for 24 hours, and the applicant was left to wait in his car, guarded by two police officers. About four hours later, the assistant came to move him to another car so that this one could be used as evidence. The second applicant came several times to help him with his physiological needs. Another six hours later he was brought to court to determine his detention order: house arrest. That measure was confirmed by the higher instance. He was under house arrest from 8 April 2011 until 21 June 2011 and during that period he was visited many times in his home by police officers, sometimes three or four times a day. The fourth applicant, Mr Shalyavski's 8-year-old daughter, was usually also present during the visits. He was released from his house arrest on account of his grave health condition. Criminal proceedings against him continued at the moment of the Court's ruling. The ECtHR found violation of Article 3 of the Convention. The first applicant complained specifically under Article 3 on account of the actions of the authorities that he had been held for hours in a car and hence had to be assisted for his personal needs in public. That caused him physical pain and public humiliation, which constitute inhuman and degrading treatment. The ECtHR found that he had indeed been victim of humiliating treatment, and the fact that this was a planned operation of the Public Prosecutors' Office and that it was aware of the applicant's condition and his daily needs meant that the authorities could have provided another person instead of leaving Mr Shalyavski in a helpless state. He also complained under Article 8 of the Convention in connection

with that treatment, but the Court did not consider it necessary to examine that complaint separately. The ECtHR also found that he did not have at his disposal effective national legal means of protection and hence stipulated violation of Article 13 in connection with Article 3. With respect to the numerous visits by the police to the applicant's home and the complaint of the four applicants under Article 8 of the Convention, as well as under Article 13, the Court decided that these complaints were clearly unfounded.

On 29 June 2017, the ECtHR delivered a judgment on the case *Dimcho Dimov v. Bulgaria (No. 2)* referring to the complaints of Mr Dimov, who is serving a prison sentence in the prison in the city of Varna during the events, that he had suffered violence by another prisoner, and more specifically that the prison authorities failed to adequately protect him protect him. In the beginning of 2012, a conflict occurred between the applicant and another detainee, whereby Mr Dimov was hit on the head and nose. The social worker intervened and isolated the applicant in another cell, warning both men that any violence breaks the rules. A week later, a prison guard led the applicant to his old corridor to collect his belongings from his locker. Meeting the other prisoner, the two men exchanged insults and the other person hit Mr Dimov on the jaw and ear. As a result of that blow Mr Dimov suffered a jaw fracture, but that was not discovered immediately. It was only after numerous visits to the medical centre of the prison, nearly two months later, that the applicant was sent to be examined by an external specialist and his injuries were determined, the bone had healed incorrectly and was inoperable. The applicant also complained of substantially deteriorated hearing. Nearly seven months after the incident he was sent for treatment in Sofia, and 18 months later he underwent surgery. The other prisoner was convicted for inflicting moderate injury. No actions were undertaken against the prison authorities. The ECtHR found that the prison authorities had fulfilled their duties and had taken reasonable measures after the first incident, aimed at protecting the applicant against another assault and that Mr Dimov's anxiety about the risk of further incident did not exceed the severity threshold under Article 3 of the Convention and hence found that there had been no violation of that text. With regard to the complaint that the applicant had not received adequate and timely medical care in the prison, the Court ruled that the domestic remedies have not been exhausted.

On 5 October 2017, the ECtHR found violation of Article 3 of the Convention in the case *Kormev v. Bulgaria* in connection with the inhuman conditions of the

applicant's detention in the places of detention and subsequently in the prison in Stara Zagora in the period between February 2009 and February 2016. The applicant was detained in overcrowded and unhygienic cells, for six months he was not given the possibility for outdoor stay and used buckets for his natural needs. The Court also found violation of Article 6 § 1 of the Convention on account of the fact that the applicant was convicted on the grounds of evidence given by a co-defendant, extracted with torture.

On 7 December 2017, the ECtHR ruled in the case *S. F. and Others v. Bulgaria*. The complaint was filed by five Iraqi citizens – two parents and children aged 16 years, 11 years and 18 months. The applicants are migrants and were caught by a police patrol in immediate proximity to the Bulgarian-Serbian border, about 25 km from Vidin. After they were caught, they were taken to the border police authorities in Vidin, where they were searched and all their belongings were taken, with the exception of one mobile telephone that they managed to hide. The cell in which they were placed was in a very poor state, on the ground floor, with limited access to the toilets. The applicants took a video clip using the concealed telephone and submitted it to the Court. They spent between 35 and 41 hours in these conditions. Subsequently they were sent to the detention centre in Sofia, from where they somehow managed to sneak out and reach Switzerland, where they were granted asylum. In view of the bad conditions for the detention of the three children, the ECtHR found violation of Article 3 of the Convention, citing both their testimonies and the video clip that they had made, and disregarded the arguments of the Bulgarian government that the clip was not *prima facie* evidence.

4. Right to Liberty and Security of Person

4.1. Placement of children in crisis centres

In 2017, no amendments were introduced in the Implementing Regulations for the Social Assistance Act concerning the time spent by children in crisis centres, which is too long (6 months) for the purposes of crisis intervention and leads to violation of several rights of the children. The practice related to the non-compliance with the deadlines for judicial review of the decisions for placing children in crisis centres was likewise not improved.

4.2 Placement of persons with mental disorders and under guardianship in specialised institutions

The group of cases *Stanev v. Bulgaria* remained under enhanced supervision by the Committee of Ministers in 2017 as well. The ECtHR found for those cases lacking possibility for periodic assessment of the health status of the institutionalised person after prolonged stay in the institution, or an opportunity to challenge in court the legality of the placements. The Bulgarian legislation continues to lack a requirement for periodic evaluation of the person's health status after involuntary placement in institutions or for seeking express consent by the person lacking full legal capacity in the event of voluntary placement and judicial review of the placement. It continues to fail to secure direct access to court for a person placed under partial guardianship, irrespective of the consent of his/her guardian.

At its last session in June 2017 on the enforcement of the cases *Stanev and Stankov*, the Committee of Ministers at the Council of Europe set a deadline until 1 October 2017 for information to be provided on:

- the way to assess the capacity of persons under partial guardianship to give consent for placement in specialised institutions and on the body that would be competent to make that assessment and to inform those persons about the placement;
- the additional guarantees provided for temporary administrative placement and its termination, and the procedure to be applied for the placement of persons who are not capable of expressing their wish/will;
- the measures needed for securing direct access to court to persons under partial guardianship, with a view to restoring their legal capacity, including through temporary solutions before the planned ambitious reform in the sphere of the legal protection of adults is introduced;
- the concrete results attained to improve the living conditions in the specialised institutions, on the mechanisms permitting to improve the living conditions of a concrete individual placed in a home, as well as on the additional guarantees for effective compensation under the State Liability Act.[10]

A certain minimal progress related to all issues listed above can be noted only in connection with guaranteeing the involvement and taking into consideration the wish of the persons placed in institutions, i.e., on the voluntary nature of the placement. At the end of 2016, amendments were made to the Implementing Regulations for the Social Assistance Act, their coming into force was postponed for 1 January 2018 due to the fact that the system for social services was unprepared for their implementation. They envisage preparations for individual evaluation of the needs and an individual support plan for persons wishing to use social services, including in specialised institutions. The assessment of the needs of the detained persons and of the availability of support services/measures will be done by administratively appointed concrete "specialists" in a multidisciplinary team for whose independence and competence no guarantees are provided in the law. Revision of the evaluation and of the plan is to be made at least once in 12 months again by the multidisciplinary team, and for long term placement in an institution – by a team within that institution, i.e., no judicial review is provided for the placement of persons with limited incapacity in institutions or resident community services. According to the provisions of the Regulations, the person to whom services are to be offered (including the persons under limited guardianship)

10 Committee of Ministers, 1288th meeting (6-7 June 2017): http://hudoc.exec.coe.int/eng#{"EXECIdentifier":["004-3767"]}

is included in the preparing of the evaluation and the plan, his/her wish is taken into consideration and is reflected in the evaluation and in the plan, which are signed by the individual personally. However, there are no provisions on the procedure according to which this is to be done. There are likewise no provisions for the accommodation of persons who are incapable of expressing their will. Similarly, no guarantees are provided against arbitrary temporary administrative placement of persons with limited incapacity, possibility for access to court with a view to lifting their incapacity, nor effective means of compensation under the legislation on the liability of the state and the municipalities for damages.

With respect to the placement, in the event that the person wishing to use social services is an adult placed under judicial disability, his/her application for use of social service, according to the new provisions, should be accompanied by: a copy of the judgement for placement under judicial disability; a copy of the certificate issued by the body responsible for the guardianship and trusteeship for the constituting of the guardianship/trusteeship and opinion of the person's trustee/guardian (which may also be requested through administrative channels, if the person does not possess it).[11] The Director of the Social Assistance Directorate organises the preparations for individual evaluation of the needs of support and an individual support plan for the person by a multidisciplinary team, and issues guidance on the drafting of the evaluation and of the plan within three business days of the filing of the application. The guidance mandatorily specifies the leading social worker on the case.

The evaluation and the plan are drafted by a multidisciplinary team of one of the social services: day care centre, centre for social rehabilitation and integration, or centre for public support, whose composition is determined by the head of the social service and includes: no less than two specialists (psychologist, pedagogue/special pedagogue, medical specialist, social worker, rehabilitator, etc.), who will be assigned, depending on the concrete case, by the head of the social service and a leading social worker appointed by the Director of the Social Assistance Directorate.[12]

The evaluation and the plan are revised and updated, if necessary, but not later than 12 months after they have been drafted, except in the cases when the person had discontinued the use of the service before that deadline. In

11 Implementing Regulation for the Social Assistance Act (IRSAA), Article 40, Paragraph 1, item 3.

12 IRSAA, Article 40, Paragraph 1, item 6.

the cases when the person is included in the waiting list for placement or use of social services, the evaluation and the plan are to be updated immediately prior to the placement or use of the social service.[13]

The multidisciplinary team drafts the evaluation and the plan within 15 days after the filing of the application by: researching the person and their family/domestic environment; visiting the person's home or their place of residence; holding meetings with the person and with their relatives and/or friends; consultation with the person's GP/attending physician, if necessary; analysing all options for providing support to the person: social services, financial assistance, health care, employment and training services, etc.; analysing documents presented by the person, if any.[14]

The multidisciplinary team performs the individual evaluation of the needs of support in compliance with the following principles: objectivity and completeness of the evaluation; comprehensiveness of the analysis of the person's needs and involvement of the person in every stage of the evaluation.[15]

When the social services are included in the individual support plan, the team respects the person's wish and personal choice, and in the event that he/she does not accept the social services recommended by the team as suitable for him/her, this reflected in the plan.[16]

The individual support plan mandatorily includes:

1. social services suitable for the person;

2. recommendations for support measures of a social, health, labour, educational, etc. character depending on the person's concrete needs, as well as the body that can provide them;

3. recommendations for support measures in the domestic environment;

4. the results to be attained through use of the social services and application of other short-term and long-term measures;

5. deadline for the implementation of the plan.[17]

13 IRSAA, Article 40, Paragraph 1, item 9.
14 IRSAA, Article 40a, Paragraph 1.
15 IRSAA, Article 40a, Paragraph 2.
16 IRSAA, Article 40a, Paragraph 3.
17 IRSAA, Article 40a, Paragraph 4

The evaluation and the plan are signed by the members of the multidisciplinary team and by the person, and are submitted to the person and to the body that had asked for them within 20 business days of the filing of the application.

Based on the plan, the placement in specialised institutions and social services in a community of resident type, when these activities are delegated by the State and local activities, is done subject to order accordingly by: the Director of the Social Assistance Directorate – for activities delegated by the State or by the Mayor of the municipality, or by an official authorised by him/her – for the local activities,[18] and for non-resident services – with a referral.

The orders and the referrals are issued on the basis of the individual support plan subject to availability of vacancies and the persons are informed in writing within 14 days of their issuance, and they may be appealed under the Administrative Procedure Code. In the cases when there are no vacancies in the social service, the Social Assistance Directorate includes the person in the waiting list for placement or use of services.[19]

In compliance with the individual evaluation and the plan, the providers of social services draft a detailed individual plan for work with the user, which clearly formulates the goals to be attained through the providing of concrete social services. The plan includes activities for satisfying: daily, health, educational and rehabilitation needs; leisure needs and needs of contacts with the family, friends, relatives, etc.[20] The individual plan of the user of social services in the specialised institutions comprises measures for taking the person out of the institutions and for inclusion.[21] The providers of long-term social services evaluate the implementation of the plan and update it every six months.[22]

4.3 Judicial review on the placement in homes for temporary accommodation of minors (HTAM) and correctional boarding schools and socio-educational boarding schools

In its judgement in the cases *A. and Others v. Bulgaria* (2011) and *I. P. v. Bulgaria* (2017), the ECtHR found violations of Article 5 § 4 of the Convention due

18 IRSAA, Article 40b, Paragraph 1.
19 IRSAA, Article 40b, Paragraph 3.
20 IRSAA, Article 40d, Paragraph 1.
21 IRSAA, Article 40d, Paragraph 3.
22 IRSAA, Article 40d, Paragraph 5.

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

Unfortunately, the issues raised in the three cases remained unresolved in 2017 as well. The Juvenile Delinquency Act was not amended in compliance with the ECHR in 2017, and the bill for avoiding criminal proceedings for minors and for imposing correctional measures, which is expected to reform juvenile justice radically, was not submitted to Parliament, in spite of the campaign and the online petition by NGOs: the National Network for Children (NNC), the Social Activities and Practice Institute (SAPI) and BHC.[23] The demands in the campaign are for: adoption of a new law on juvenile justice to replace the 60-year-old law on the fight against antisocial behaviour of minors; closing down of the correctional boarding schools and of the socio-educational boarding schools in which the children were shut for rehabilitation, but the opposite effect resulted, creating specialised juvenile courts, securing a fair trial, accessible and high-quality legal aid for children, specialisation of the professionals working with children: police officers, investigators, judges, prosecutors, social workers, etc., and developing of new services and measures that are alternative to deprivation of liberty: programmes and services for prevention, support and re-integration of the children and young people. A positive step in the direction of juvenile justice can be seen in the

23 Citizens and NGOs demand immediate reform in juvenile justice, 12 October 2017, http://www.bghelsinki.org/bg/novini/press/single/nezabavna-reforma-v-detskoto-pravosdie-poiskaha-grazhdani-i-nepravitelstveni-organizacii/.

training of 12 judges and prosecutors as trainers of magistrates to work with children in conflict with the law.[24]

The situation deteriorated in 2017 with the detention of candidates for international protection as a result of the amendments to the legislation adopted at the end of 2016, which restrict the freedom of movement of the persons seeking protection.[25]

◆

During the year the ECtHR delivered several judgments with which it found violations of the right liberty and security of person. On 19 January 2017, the Court found violation of Article 5.4 of the Convention in its judgement on the case *I. P. v. Bulgaria*, because the applicant, who was a minor during the events, spent 30 days in a home for temporary accommodation of minors, not having the possibility to appeal the legality of his detention before a court. Since the beginning of 2012, the local committee for combating anti-social behaviour of minors subjected the applicant to a number of correctional measures, including placing him under the supervision of a public tutor, prohibition to visit certain places and to meet certain people, as well as to change his present address. Two years later, in February 2014, the committee reached the conclusion that these measures had had no effect on his behaviour and proposed to the court to place him in a juvenile detention centre (JDC). After that ruling, I. P. ran away from his home and when the MoI bodies caught him, they placed him in a home for temporary accommodation of minors (HTAM) until he was sent to a boarding school. During that time it was impossible for him to appeal the decision to be sent there. The actual institution was and functioned as juvenile arrest: rooms with bars on the windows and locked doors. I. did not receive at any time access to legal aid, education or another care that children in custody are entitled to. In addition to being in violation of Article 5.4 of ECHR, which was established, the decision raises a number of questions on the problems of the juvenile justice system in Bulgaria, as well as of the child protection system in general. The absence of effective possibility to appeal before court the prosecutor's permission to extend the detention of children in HTAM is inappropriate, being a product of the obsolete law on the fight against antisocial behaviour of minors. The ECtHR accepted that the system for combating anti-social behaviour of minors lacks a procedure for

24 http://www.justice.government.bg/117/13689/, 30 March 2017.

25 See below: **Right to asylum and international protection**.

appeal of the acts of the officials responsible for placing children in HTAM and expressed doubts that the prosecutor's permissions for the accommodation may be deemed equal to an individual administrative act so as to see liability under Article 1 of the State and Municipalities Responsibility for Damages Act (SMRDA). Conversely, in October 2016, the Constitutional Court accepted that these acts of the prosecutor constitute individual administrative acts that may be appealed in court under the general procedure. That decision of the Constitutional Court is not discussed in the present ECtHR judgement.

On 19 January 2017, the ECtHR gave a ruling on the case of *Ivan Todorov v. Bulgaria*. It concerned the applicant's complaints that his detention so that he could serve his prison sentence was illegal and that he did not have any means of checking the legality of his detention, and that the national law does not provide any right to compensation in such cases. The applicant was sentenced to 20 years imprisonment in 1987 for stealing petrol from the military unit where he served. In January 1991, the serving of the sentence was interrupted on medical grounds and the applicant was free until December 1992 when the interruption was lifted. The authorities failed to find Mr Todorov and declared a nationwide search. In the meantime he settled in the USA, where he lived until 2008. He was arrested upon his arrival at Sofia Airport and was sent to the Sofia Central Prison. The applicant turned to the Public Prosecutors' Office with a request to be freed as the statute of limitation for serving his sentence had expired, but his request was rejected because after he was declared for nationwide search, the statute of limitation was considered to be interrupted and the new statute of limitation expired several months after his second arrest. The absolute statute of limitation expired at the end of 2009. In 2011, Mr Todorov turned to the President of the Republic with a plea for pardon, but it was rejected. The applicant also turned repeatedly to various other bodies to prove that the absolute statute of limitation had expired, but as no such procedure is envisaged in the legislation, his requests were rejected. He was freed in 2014. The ECtHR deemed inadmissible his complaint under Article 5 § 1, namely that his detention was not legal. However, the Court found violation of Article 5 § 4, as he did not have a legal means to check the legality of that detention. Finally, the applicant complained that he did not have a means to receive compensation for his illegal imprisonment and the ECtHR confirmed that violation of Article 5 § 5.

On 8 June, the ECtHR gave a ruling on the case of *M. M. v. Bulgaria*. The applicant is a person without citizenship, of Palestinian origin. He was born

in 1991 in Damascus, Syria. He arrived in Bulgaria on 22 July 2008. His application to be granted refugee status was rejected twice, after which the State Agency for Refugees granted him humanitarian status and issued him a residence permit. Upon the demand by the State Agency for National Security (SANS) that permission was withdrawn on 13 July 2013 and orders were given for the expulsion of M.M. together with a 10-year ban to enter the country. SANS claims that his presence constitutes a threat to national security. He was sent to the reception centre in Busmantsi near Sofia. In November 2013, M. M. was taken to Sofia Airport and put on a flight to the Lebanon. As the Lebanese authorities refused to accept him, he was returned to Bulgaria. Upon arriving in Sofia, he was detained at the airport and was then sent to the special home for temporary accommodation of foreigners in Busmantsi. On 4 December 2014, the European Court of Human Rights (ECtHR) received a request for interim measures and indicated to the Bulgarian government that the applicant was not to be expulsed for the duration of the proceedings. On 14 December 2013, SANS gave orders for the administrative detention of M.M. He appealed before the Sofia Administrative Court with the argument that the detention is not justified because the implementation of the expulsion had been stopped. The Administrative Court confirmed the detention, but later the Supreme Administrative Court revoked it and gave orders for M.M. to be freed. Parallel with these judgements, the Sofia Administrative Court gave orders for extending the applicant's detention for six more months. He was eventually freed on 16 December 2014 and he subsequently received extension of the duration of his accommodation until 2018. M. M. claims in his complaint to the ECtHR that if he was expulsed to his state of origin, Syria, his life would be in danger and he would be exposed to a risk of inhuman and degrading treatment. He also complained of the lack of effective means of protection under the Bulgarian legislation, and of the failure the complaint against his detention to be considered on time. The ECtHR accepted that the dispute on the applicant's possible expulsion had been resolved at national level, after he was granted extension of his status in Bulgaria and deleted the complaint from the list under that point. However, the Court found violations of Article 5 § 4 of the Convention on account of the impossibility to appeal the legality of the detention in court, which in turn was obliged to rule speedily. The Court found that the administrative courts in Bulgaria had examined M.'s complaint within a time period that is drastically inconsistent with the requirement for action to be taken "speedily" under the Convention.

On 19 October 2017, the ECtHR ruled on the case *Vanchev v. Bulgaria*. Mr Vanchev is a former police officer. He was placed under house arrest with a prosecutor's order of 6 March 1996 after criminal proceedings started against him. The detention continued until 3 April 1996. Then he was again placed under house arrest from 1 July 1996 until 30 September 1997, or for a total of one year, 6 months and 25 days. In 1998 he was sentenced to one year imprisonment for failing to discharge his official duties. Under different proceedings, in 2003 he was sentenced for fraud again to one year imprisonment, whereby the Supreme Court of Cassation (SCC) ordered one sentence of one year imprisonment for both convictions. On 1 July 2003, the applicant was detained in the prison, where stayed until 18 September 2003, when he was freed following an order by the competent prosecutor, who also gave orders that the period of the pre-trial detention should be taken into consideration. Mr Vanchev subsequently appealed his detention under the State and Municipalities Responsibility for Damages Act and received BGN 10,000 (EUR 5,000) in compensation for non-pecuniary damage, having been deprived of freedom without grounds for 9 months and 26 days, but the SCC reduced the compensation to BGN 3,000 (EUR 1,500). The Court found violation of Article 5 § 1 of the Convention, because every imprisonment must be legal. The ECtHR also found violation of Article 6 § 1 in connection with the applicant's complaint that his obligation to cover the costs of the case reduced substantially the compensation that he received. In the concrete cases Mr Vanchev received BGN 3,000 (EUR 1,500) in compensation, but he had to pay BGN 2,040 (EUR 1,020) for court fees, which is not in compliance with the requirement under Article 6 § 1. Indeed, Bulgaria changed the system for calculating the court fees for claims under SMRDA, but the applicant did not benefit from that.

5. Independence of the Judiciary and Fair Trial

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

In October, the European Commission for Democracy through Law (the Venice Commission) published its long awaited opinion on the amendments to the JSA following the constitutional changes of 2015.[26] The opinion contains a number of criticisms of the law – both in terms of the regulations adopted soon after the constitutional changes, and of the amendments of 2017. The opinion notes that the present composition of the Supreme Judicial Council (SJC) does not comply with the requirement in Recommendation CM(2010)12 of the Committee of Ministers of the Council of Europe (2010), according to which no less than half of the Council member ought to be judges elected by judges. Such members are a minority in the present SJC composition.[27]

The most severe criticism in the opinion of the Venice Commission is directed towards the accountability and the powers of the Public Prosecutors' Office, and more specifically of the Prosecutor General. According to it, the Prosecutor General is "essentially immune from criminal prosecution and is virtually irremovable by means of impeachment for other misconduct."[28] This is a

26 See: BHC (2016). *Human Rights in Bulgaria in 2015.* Sofia: Bulgarian Helsinki Committee, March 2016.

27 European Commission for Democracy through Law (Venice Commission). *Bulgaria: Opinion on the Judicial System Act*, CDL-AD(2017)018, Strasbourg, 9 October 2017, § 14.

28 *Ibid.*, § 37.

serious problem that had already provoked a sentence against Bulgaria by the European Court of Human Rights in the case of *Kolevi v. Bulgaria* (2009). This needs to be resolved through new constitutional and legislative changes.

Another cause for concerns stems from the broad powers of the Bulgarian Prosecution outside the scope of criminal law in discharging its constitutional powers of "supervision of legality." According to the Venice Commission, these powers are very unclearly defined both in the Constitution and in the law, and they do not set clear limits of the coercion that the Public Prosecutors' Office may exercise. It may participate in administrative proceedings and even in civil disputes when it deems it necessary to defend the interest of the State. Moreover, in exercising its powers under Article 145, Paragraph 4 of JSA, it may require both from public and from private officials to assist the prosecutor in exercising his powers and to secure access for him to the respective premises and places. In the opinion of the Venice Commission, "coercion powers of the prosecution service outside of the criminal law sphere should be seriously restricted, if not totally suppressed."[29]

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

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

In November, the European Commission submitted its regular report on the progress of Bulgaria under the Cooperation and Verification Mechanism, in which it made an evaluation of the JSA enforcement after the legislative changes in 2016. The Commission defined the election in June of a new composition of SJC as being in compliance with the principle "one magistrate – one vote" and as progress compared to previous elections. However, the

29 *Ibid.*, § 43.

Commission was much more critical with respect to the parliamentary quota. It shared the criticisms of a number of representatives of NGOs that the result of the voting was predetermined through arrangements between the principal political parties, and the debate was superficial and did not affect the qualities of the candidates.[30]

With respect to the other monitored problem – the fight against corruption and organised crime – the Commission's report is much more sceptical. Reporting the undertaking of some "steps" towards fulfilling the formulated recommendations, the report finds that a number of key initiatives have not yet been adopted and implemented.[31]

In July, the National Assembly adopted amendments to the Judicial System Act, some of which violated the independence of the court. The amendments in Article 230 provide a possibility for temporary suspension of a judge, prosecutor or investigator from the respective SJC Judicial Chamber on the demand of the Prosecutor General, when he/she has been arraigned for any deliberate indictable offence. The provision in practice obliges the SJC Judicial Chamber to dismiss automatically a judge upon the demand by the Prosecutor General without appraisal, without a possibility for protection or judicial review concerning the need of such a measure and irrespective of the grounds of the charges. In this way, the Public Prosecutors' Office has a chance to manipulate the trial by eliminating from it inconvenient judges for the period of the completion of criminal proceedings that had started on the initiative of the prosecutor. The launching of criminal proceedings in the Bulgarian criminal law system is likewise not subjected to judicial review.

These amendments provoked a strong criticism both at national and at international level. On 31 July 2017, the Union of Judges appealed to the President to return the bill for a new discussion. At the end of September the possibility the Public Prosecutors' Office to suspend judges from the proceedings was specifically noted by the rapporteur of the Parliamentary Assembly of the Council of Europe, Mr Fabritius, in his explanatory memorandum to the Assembly's proposed resolution on "new threats to the rule of law in Council of Europe Member States."[32] In its opinion of 9 October 2017 the Venice Commission

30 European Commission. *Report of the Commission to the European Parliament and Council*, COM(2017) 750, Brussels, 15 November 2017, p. 4.

31 *Ibidem*, p. 10.

32 CLAHR, "New threats to the rule of law in Council of Europe Member States: selected examples", Explanatory memorandum by Mr Bernd Fabritius, rapporteur, 25 September 2017.

expressed concern that similar powers of the Public Prosecutors' Office "may be very dangerous for the judges' independence." It recommends amendments to the JSA with a possibility for the JSA Judicial Chamber to "review the substance of the accusations and decide whether the evidence against the judge is persuasive enough … and whether it calls for a suspension."[33]

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

The July bill for amendment of JSA also envisaged additional provisions in Article 217 of the law, aimed at restricting the possibility to finance professional organisations of the magistrates: judges, prosecutors and investigators, as well as of the court staff. The sources of their property, according to the new Paragraph 3, are limited only to membership dues, material contributions and donations from their members. Any other financing or offering property in any form is prohibited. According to the additional text in Article 195, Paragraph 1, item 4 of the law, the judges, the prosecutors and the investigators may participate in research and teaching activities, but not when they are "financed exclusively by a foreign state or by a foreign person." These restrictive additions to the JSA were subjected to sharp criticism immediately after they were submitted in the beginning of July. On 7 July, 17 NGOs addressed the Speaker of the National Assembly, the chairpersons of the parliamentary groups and the Chairman of the Committee on Legal Affairs, qualifying the restrictions as unjustified, and the unclear motives to them as entirely inconsistent. If they had been adopted, they undoubtedly would have limited the

33 Venice Commission, *Bulgaria: Opinion on the Judicial System Act*, §§ 45-46.

right to association of the magistrates on discrimination grounds, weakening their organisations and as a result they would have stifled the voice of these professional communities in public space.[34] Subsequently similar criticisms of the bill also came from a number of other local and international organisations. In the long run, that part of the bill was not passed by the National Assembly. However, a provision was adopted, according to which judges, prosecutors and investigators may not participate in the managing and control bodies of organisations that are different from ones created for protection of their professional interests, and whose individual members they are. In this way, they may not participate, e.g., in the managing bodies of the Union of Bulgarian Jurists, or in the managing bodies of international organisations of magistrates. The provision in § 7 of the adopted law is also restrictive as it introduces an obligation to declare within one month of its coming into force membership of the magistrates in any non-profit organisations before the Supreme Judicial Council.

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

34 BHC, etc., Joint opinion in connection with a bill for amendments to the Judicial System Act, Sofia, 7 July 2017, accessible at: http://www.bghelsinki.org/bg/novini/press/single/svmestno-stanovishe-vv-vrzka-ss-zakonoproekt-za-izmenenie-i-doplnenie-na-zakona-za-sdebnata-vlast/.

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

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

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

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In 2017, the ECtHR gave several rulings in connection with the right to fair trial under Article 6 of ECHR. On 29 January, the Court delivered a judgement on the case of *Lena Atanassova v. Bulgaria*. It concerns the complaints of the applicant of an unfair trial. Ms Atanassova had three convictions for the

2000–2002 period for cheating different persons, and after cumulation of the sentences, she served her sentences and was released from prison in 2003. Different proceedings were initiated against the applicant in 1999, but as she was not found at any of her known addresses, the proceedings were stopped and reopened in 2005. At the beginning of the year she was notified by the investigator about these proceedings, following a signal from two persons who complained that they had been cheated by the applicant. Ms Atanassova was acquainted with the materials on the case, whereby she confirmed that the same two persons were among the victims under the first proceedings, for which she was convicted and she believes that she had already served her sentence. One month later she was again summoned to familiarise herself with the materials and the applicant confirmed again what had been done and said that she would present additional arguments in court. She expressed readiness to negotiate a plea bargain with the Public Prosecutors' Office. She was not detained in the police precinct, explicitly indicating her address, including her present address in the village of Tarnene, as well as her telephone numbers. Later in the year an indictment was submitted to the court after the applicant was not found at any address, though she was not looked for in the village of Tarnene. The court proceedings were in her absence and she was sentenced to 10 months effective imprisonment in 2007. In the meantime the applicant gave birth to a daughter and two months after the sentence was pronounced she was arrested in her home in the village of Tarnene and taken to the prison in the town of Sliven. She filed a request for the case to be reopened, but it was rejected by the SCC. Later she filed several more requests for suspension of her punishment on account of the need to take care of her several months old daughter whom she was still breastfeeding and on account of her deteriorated health, but they were not satisfied. The ECtHR did not find violation of Article 6 § 1 because the applicant had been notified of the criminal proceedings against her during the two interrogations in 2005, when she declared to the investigator that she would give more explanations during the trial phase. Moreover, the trial in the applicant's absence took place only after a national search for her, and the reopening of the proceedings was rejected with the motive that Ms Atanassova had tried to evade justice. The Court also rejected the complaint under Article 8 as inadmissible and refused to examine the complaint related to the applicant's other grievances.

On 12 May 2017, the ECtHR Grand Chamber ruled on the case *Simeonovi v. Bulgaria*, brought to its attention by the applicant Simeonov on account of his

complaint of not having access to legal counsel during the first three days of his detention. The decision is important because the ECtHR Grand Chamber rules in exceptional cases that are also of special importance, which would also influence the Court's practice in similar cases. The Court gave its initial ruling on the case on 20 October 2015 and found violation of Article 3 of the Convention due to the bad material conditions in the places of detention in Burgas, in the prison in Burgas and in the prison in Sofia, where the applicant was placed successively after 1999. The ECtHR explicitly cited the reports of the Committee against Torture over the years, which repeatedly confirmed the inadequate living conditions in the cited institutions. However, the Court found no violation with respect to Mr Simeonov's complaint that he had not been assisted by an attorney during the first three days of his detention in 1999, and that the meetings with his attorneys in the places of detention in Burgas took place in the presence of the investigator. The Grand Chamber confirmed the ruling of the Chamber with respect to the complaint under Article 6 of the Convention with the argumentation that the initial restriction of the applicant's right to attorney did not result in unfair trial. The Court also pointed out that no evidence that had been added to the criminal proceedings had been gathered during that three-day period. A little later, after he was informed about his right to remain silent, and in the presence of an attorney, he made a confession. Mr Simeonov participated actively during all stages of the criminal proceedings. The sentence was based both on his confessions and on other evidence. The case was examined by three court instances, which substantiated their judgements both in factual and in legal terms.

On 13 July 2017, the ECtHR gave a ruling on the case of *Velkova v. Bulgaria*. The applicant filed a request to the Kardzhali Municipality on the grounds of Article 35 of the Law on the Transformation and Privatisation of State and Municipal Enterprises (revoked) to buy the first floor of a trade centre in the town where she had rented a shop since 1993. The Municipal Council refused in 1997, and she appealed that refusal before the District Court, which revoked it. That Court found that the disputed premises were autonomous property (both in technical terms and under the requirements in the law) and can be subject of disposition transaction. The Supreme Administrative Court (SAC) left that ruling in force on 18 February 2005. In the meantime, the Mayor of the town terminated the rent contract and in September 2001 representatives of the municipality coercively evicted the applicant from the premises rented by her. After the SAC judgement of 2005, Ms Velkova filed a request to the

Municipal Council to launch a privatisation procedure of the first floor of the trade centre, but received no answer. She referred the matter to the District Prosecutor, who refused to initiate criminal proceedings with the motive that the decision had been reached by a collective body. In April 2006, the Municipal Council decided to open a privatisation procedure in favour of the applicant, but only for a part of the first floor of the disputed premises. In July 2008, the Mayor opened a privatisation procedure for a part of the first floor, while Ms Velkova again appealed the tacit refusal for a privatisation procedure to be opened for the entire floor. The complaint was not upheld by the courts. In the meantime, the applicant managed to buy a part of the first floor of the trade centre in 2008. She also filed a claim under Article 1 of the SMRDA, but it was rejected because according to the Administrative Court of Sofia City (ACSC) she had not proved what damages she had sustained as a result of the non-implementation of a judgement. It was only in 2013 that the municipal authorities continued with the privatisation procedure for the rest of the trade centre and in August 2014 the applicant bought the rest of the first floor of the trade centre (that became a fact only after the complaint was communicated to the Bulgarian government). The ECtHR found a violation of the right to fair trial under Article 6 § 1 on account of the prolonged failure on the part of the municipal administration of Kardzhali to implement an effective judgement of the national courts. Although the final judgement in favour of the applicant was completely enforced, that occurred after considerable delay, three and nine years after the enforcement of the judgement had become obligatory and after the complaint before the ECtHR was filed. The Court found that the applicant had legitimate expectations and hence "ownership" in the sense of Article 1 of Protocol 1, consisting in the right to receive an offer to buy the first floor of the trade centre under the preferential terms of Article 35, §1 of the Privatisation Act and found violation of Article 1 of Protocol 1 on account of the prolonged privatisation procedure. The Court also found violation of Article 13 in connection with these two texts of the Convention. The ECtHR observed the very formal approach of the national courts in their assessment of the concrete material and non-material damage in the procedure under the State and Municipalities Responsibility for Damages Act (SMRDA).

With another judgement of 13 July 2017 on the case of *Nikolay Genov v. Bulgaria* the ECtHR found violation of Article 6 § 1 of the Convention. The applicant was accused of having acquired and kept counterfeit currency (5 banknotes of 100 USD each) in the period between 2002 and 10 January 2007. Before the

District Court in Pazardjik the applicant gave evidence that his brother sold a flat in 2002 and gave him Bulgarian levs which the applicant exchanged for dollars. He bought 1,000 USD and set aside half of them for "a rainy day." That evidence was confirmed by the applicant's brother, who was questioned as witness. With a sentence of 25 January 2008 the applicant was found guilty of having acquired counterfeit banknotes in the period between 26 March 2005 and 10 January 2007 (prior to 26 March 2005 the acquiring of counterfeit currency was not deemed to be a crime and the possession of such currency was considered to be a crime only in the case of large amounts). The District Court acquitted the applicant for the period between 2002 and 26 March 2005. In his complaint against the conviction Mr Genov points out the argument that there is no evidence that when he bought the 500 dollars he knew that they were counterfeit. The sentence was left in force by the Court of Appeal in Plovdiv, which fully shared the motives of the lower instance. The issue of the time when the applicant acquired the counterfeit banknotes was not commented upon at all. In his complaint to the SCC the applicant presented again his arguments about the unproved charges: if it was established that he bought the dollar banknotes in 2002 with money given to him by his brother, when that act was not criminalised, where is the proof that he acquired that currency after 25 March 2007? The SCC upheld the sentence. The ECtHR found violation of Article 6 § 1 of the Convention, because the national courts had not motivated their acts sufficiently and failed to respond to the disputed argument about the time when the counterfeit currency had been acquired. Although the courts are not obliged to give a detailed response to every argument pointed out, it should be evident from the judgement that the principal issues of the case had been addressed.

On 5 October 2017, the ECtHR issued a judgement on the case of *Varadinov v. Bulgaria*. It concerned the applicant's complaint that he was unable to defend himself against the arbitrary actions of the traffic police. In 2007, Mr Varadinov tried to park his car in a street in Plovdiv, but was stopped by representatives of the traffic police who issued a penalty charge notice for administrative violation for his having tried to stop or park at a place where the presence of the car allegedly created a danger or impeded the traffic. The applicant signed the notice with the objection that there had been no road sign indicating this in that street. Subsequently a penalty order was issued, with which he was fined BGN 50 and was deprived of five control points. He filed a complaint before the Plovdiv District Court, but it terminated the

proceedings because fines of BGN 50 or less are not subject to judicial review. The ECtHR found violation of Article 6 § 1 of the Convention, because the applicant did not have the opportunity to defend himself in court. The Court drew special attention to the circumstance that in that case it was irrelevant that the penalty was administrative and small in size, the punitive character of the measure imposed mattered.

6. Right to Respect for Private and Family Life, Home and Correspondence

6.1. Use of special surveillance means

Examining yet again the enforcement of the judgements of the European Court of Human Rights in connection with the control over the special surveillance means, the Committee of Ministers of the Council of Europe noted at its 1288th session (6-7 June 2017) that initial authorisation of the use of special surveillance means in the context of combating terrorism and protection of the national security for a period of two years, without any periodic judicial review during that period, could weaken the guarantees for protection inherent to the judicial control, and invited the Bulgarian authorities to provide an assessment of possible measures in that respect. The Committee also invited the authorities to provide their evaluation of the probability of a shared database to be effectively built for the requests for permission to use special surveillance means and to present also concrete information on the powers of the courts to gather evidence when examining claims for compensation for the unlawful use of special surveillance means. With respect to the building of a database of the demands, the National Office for Control of Special Surveillance means submitted a proposal to the Supreme Judicial Council already back in 2014, but reported that no actions had been undertaken in that direction by the end of 2016.[35] With respect to the cases for compensation under SMRDA there is apparently not enough case law, while according to the Office, civil chambers terminate the cases against the court that had authorised the use of special surveillance means on account of a interpretative decision of the SCC of 2015 to that effect.[36]

35 Report of the National Office for Control of Special Surveillance means on its activities in 2016, p. 23.

36 Report of the National Office for Control of Special Surveillance means on its activities

In November 2017, Parliament received the report of the National Office for Control of Special Surveillance means on its activities in 2016.[37] According to it, procedures applying special surveillance means (telephone tapping, surveillance, etc.) in connection with 2,749 persons started in 2016, their number during the previous year being 2,638, and in 2014 – by nearly 35% more: 4,202. The peak was in 2011 – with demands for 8,184 persons. The Office concludes from these data that a tendency to reduce the number of the persons controlled with special surveillance means started after 2011 and "stabilised" in 2016. The highest number of demands for the use of special surveillance means came from the MoI and the Public Prosecutors' Office. However, the number of demands coming from the SANS diminished: the registered decline was by about 9% (10.08% for 2016, with 19.16% in 2015) due to the return of the Directorate General for Combating Organised Crime from SANS to the MoI and due to the "numerous refusals by judges to authorise the use, received in 2016." However, the Office reported that compared to the previous year, the number of requests for prolonging the period of telephone tapping increased by 26%.

Most often the request to use special surveillance means targeted: organised criminal groups (2,108), drugs (702), excise goods (307), theft (235), fraud (160) and bribery (94). For the sake of comparison, in 2015 there were twice fewer demands to use special surveillance means to detect crimes connected with organised criminal groups. However, during that same year there were 175 demands for special surveillance means for accepting and offering bribes.[38]

In 2016, the authorisations for the use of special surveillance means were 4,885 (3,772 with initial request and 1,113 for extension of the validity of the authorisation), i.e., the number of authorisations increased by 21% compared to 2015, when they were 4,034. The highest number were granted by the Specialised Criminal Court (2,179), followed by the district courts in Plovdiv, Stara Zagora and Blagoevgrad. The authorisations coming from the Sofia City Court (SCC) decreased drastically to the modest 90 (2% of the total number) against the background of the more than 40% of all authorisations that the SCC issued in 2014 (2,298 of a total of 5,604), and in 2015 – 837, i.e., 21%. In spite of ranking first in the number of authorisations issued, the Specialised

in 2016, p. 26.

37 Report of the National Office for Control of Special Surveillance means on its activities in 2016, http://nbksrs.bg/

38 Report of the National Office for Control of Special Surveillance means on its activities in 2016, p. 10.

Criminal Court (SpCC) proved to lack adequate material and technical facilities and staff for that activity. It is also pointed out that numerous violations of the rules for the use of special surveillance means had been brought to the attention of the Public Prosecutors' Office, but there still existed "controversial practice" in the subsequent inspections. In 2016, there were refusals in 1,209 cases, almost double compared to 2015. The highest number of refusals came for requests filed by SANS (31% of all requests by the Agency), followed by the MoI (19%) and the prosecutor's offices (16%). The highest number of refusals came from the SpCC, SCC and the District Court in Plovdiv. It is interesting to note that if there had been no refusals, authorisations would have been granted for a total of 18,000 operational means. In 2016, authorisations were granted for a total of 14,382 means, which is a 25% increase compared to 2015. The most frequently authorised actions were: telephone tapping in 4,774 cases, observation – in 4,154 and tracking – in 4,146 cases. The means actually used were only 60% of the authorised one. It becomes clear from the report that the main reasons for the refusals were "insufficient motivation," "referral to an incompetent court or drafting by an incompetent applicant." Nevertheless, the Office found yet another positive tendency: the judges no longer returned the non-compliant requests with oral instructions to remove the shortcomings, they pronounced a refusal in compliance with the law.

The use of special surveillance means resulted in the preparation of 1,413 pieces of material evidence, 15% fewer than in 2015. The ratio between the number of pieces of material evidence prepared and the number of persons with temporarily restricted fundamental rights by special surveillance means is 46.33%, i.e., 11% less compared to 2015.

In 2016, the Office started checking the legality of the use of special surveillance means (telephone tapping, surveillance, observation, tracking, etc.) for 88 cases, 81 of which were following signals from citizens, among whom there were five MPs from the previous, 43rd Parliament, 13 magistrates and 9 attorneys. Four of those magistrates were informed that unauthorised surveillance means were used against them. For the 2014-2016 period the Office notified 19 citizens of unlawful use of special surveillance means against them. Eight of them filed claims for non-pecuniary damage under the State and Municipalities Responsibility for Damages Act. The report of the Office informs that by the end of 2016 there was no effective court ruling on these cases. Regulations are prescribed under these cases, which evoke objections.

On the basis of SCC Interpretative Decision 5 of 15 June 2015,[39] all civil chambers terminated proceedings initiated under Article 2, Paragraph 1, item 7 of SMRDA, in their part containing claims filed against the courts.[40] The ruling offers a very narrow interpretation, stating that "the Court was legitimised to represent the State in claims for compensation for damage under Article 2 of SMRDA under Paragraph 2, items 4 and 5."

6.2. Forced evictions of Roma from their only homes

In 2017, the situation in Bulgaria with the forced evictions of Roma from their only homes continued to be a serious problem. It deteriorated in practice, part of the deterioration resulting from racist instigation originating from or finding support among the extreme nationalists who participate in the government.

In September 2017, in the context of the monitoring on the implementation of the ECtHR judgements, the Committee of Ministers of the Council of Europe expressed regrets that for yet another year the Bulgarian authorities had failed to take actions to submit amendments to the State Property Act (SPA), Municipal Property Act (MPA) and Spatial Planning Act (SpPA), which would guarantee proportionality of the actions aimed at coping with the illegal possession of public property and the orders for illegal buildings to be demolished. The Committee invited the State to submit information on what had been done and a plan-schedule for the adoption of the required legislative reform by 1 February 2018.[41] Although in 2016 in a report of the Minister of Justice on the implementation of the judgements from the group *Yordanova v. Bulgaria* it is stated that in connection with the convictions "it is necessary to consider the explicit introducing" of the principle of proportionality in the demolition of illegal construction under Articles 195, 225 and 225a of SpPA, Article 80 of SPA and Articles 46 and 65 of (MPA) in the cases affecting the right to respect for one's personal and family life and home under Article 8 of ECHR,[42] no actions in that direction had been undertaken.

39 http://www.vks.bg/Dela/2013_05_%D0%9E%D0%A1%D0%93%D0%9A_%D1%80%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5.pdf

40 SMRDA, Article 2, Paragraph 1, item 7: "The State shall be liable for damage caused to private persons by the investigating bodies, the Public Prosecutors' Office or the Court, in the event of unlawful use of special surveillance means."

41 http://hudoc.exec.coe.int/eng#{"EXECIdentifier":["004-1924"]}

42 Ministry of Justice (2016). *Fourth Annual Report of the Minister of Justice on the Implementation of the Judgements of the European Court of Human Rights on Cases against the Republic of Bulgaria in 2016*, p. 24, accessible on the Internet at: http://www.justice.government.bg/Files/4-ti_Obobshten_doclad_636425381305 499510.pdf.

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

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

The *Arman Mahala* case in the city of Plovdiv

In April 2017, the municipal authorities in Plovdiv launched a campaign to demolish illegal buildings in the segregated Roma *Arman Mahala* neighbourhood. The BHC Legal Defence Programme (LDP) provided legal aid and representation in court to six of the affected families, a total of 21 persons, among whom there were babies, young children, pregnant women, elderly

people above 70 years, as well as people with serious diseases. All six houses date decades back (the earliest two are from 1991). They were built without a building permit over land that is private municipal property. The families have lived in their homes since the time when they were built to this day with the knowledge of the municipal authorities. The authorities tacitly recognised and accepted the existing situation: most of the members of the families had permanent residence and were registered at the address of the houses planned to be demolished, as is evidenced by their ID documents; the municipal authorities collected taxes and waste collection fee from the owners of four of the houses; water and electivity were supplied to the houses of all by the respective public utilities. The houses of all people concerned were with massive construction. None of the families had another place to live in. All six families survived on money far below the poverty threshold calculated by the Bulgarian National Statistical Institute.

On 24 April, the BHC LDP filed a request to the ECtHR for interim measures for protection of these six families. In response, the ECtHR instructed the Bulgarian authorities not to demolish the homes before they had provided guarantees that they would secure alternative shelter to the families. The Bulgarian government undertook such a commitment before the ECtHR. As a result of that guarantee on the part of the Bulgarian authorities, the ECtHR revoked the temporary measures. In January 2018, the authorities had not secured alternative shelter for any of the applicants. Five of the six houses are still intact. In spite of their guarantees before the ECtHR, the authorities demolished the home of one of the families. LDP assisted the six families to file a complaint before the ECtHR. The Court gave priority to the case and at the moment it is pending before the Court, to be examined soon.

The *Loznitsa* case in the town of Asenovgrad

On 26 June 2017, an incident occurred between youths of Bulgarian origin training rowing and Roma citizens. According to data from the media, "eyewitnesses claim that the fight on Monday started from a training of the canoeists and kayakers from the Asenovets youth training school, whereby Roma sunbathing nearby started mocking rowers whose boat turned upside down in the water. Exchange of words, swearing and insults followed, which degenerated into throwing of stones and a fight. Three of the rowers and one of the Roma were injured. The fight continued later in front the hospital in Asenovgrad, but already with the participation of the relatives of the two

belligerent groups. Nine people were arrested there by the police. The total score was seven people in hospital, one of whom with a broken wrist, and another one with two broken ribs."[43] According to information in the media, the Public Prosecutors' Office filed a total of 11 charges against Roma citizens for hooliganism of particular audacity and cynicism.[44]

On 28 June 2017, there was an anti-Roma protest of about 1,000 people who tried to enter the Roma neighbourhood, but were stopped by the police and gendarmerie.[45] On the next day representatives of the protesters met with the authorities, including with Valeri Simeonov, Deputy Prime Minister for the economic and demographic policy, who later tweeted, cited in the media: "The state authorities entered the Gypsy neighbourhood in Asenovgrad and will check the legality of the houses: the illegal ones will be demolished. The police maintain permanent presence in the Gypsy district in Asenovgrad and will remain there for as long as is needed. The fight against everyday crime starts from the ghettoes. The Gypsies who had come to Asenovgrad from the nearby villages will be subjected to thorough check of their address registration."[46]

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

On 4 July 2017, the Mayor of Asenovgrad declared that the anti-Roma protests of Bulgarians would not stop before the three claims of the protesters have been met, one of which is to remove illegal residents in the Roma neighbourhood and to demolish their houses, and, accordingly, the municipality will undertake the demolitions.[47]

43 "After a fight the authorities threatened the Roma in Asenovgrad with eviction and demolition of houses," *www.mediapool.bg*, 29 June 2017, also accessible on the Internet at: http://www.mediapool.bg/sled-sbivane-vlastta-zaplashi-romite-v-asenovgrad-s-izselvane-i-sabaryane-na-kashti-news265953.html.

44 "11 charges for the Gypsy fight near Asenovgrad – some face up to 10 years in prison," *Clubz.bg*, 14 September 2017, also accessible on the Internet at: https://clubz.bg/node/58353.

45 See "After a fight the authorities threatened the Roma in Asenovgrad with eviction and demolition of houses," *www.mediapool.bg*, 29 June 2017, cited above.

46 Ibidem. .

47 "The Mayor of Asenovgrad: the illegal buildings are outside the town's regulation," *www.24chasa.bg*, 4 July 2017, also accessible on the Internet at: https://www.24chasa.bg/novini/article/6316323.

On 24 August 2017, the *National Round Table on Real Policy and Effective Solving of the Problems of Ethnic Integration* was held in Asenovgrad, at which representatives of the local Roma citizens were not invited. Deputy Prime Minister Valeri Simeonov was cited saying: "The State's commitments to solve the problem with the ethnic tension in Asenovgrad have been fulfilled." "The second thing we undertook as commitment was to list and demolish the illegal buildings; 16 have been demolished already and the documents for 17 more have been prepared. These are slow processes because they have the right to appeal in court, but the process goes on."[48] According to the same article, the authorities inspected residents of the neighbourhood to check their address registration and current, and – according to Simeonov – more than 830 people without registration were found.

On 23 August 2017, BHC researchers met with representatives of the Asenovgrad Municipality: Mr Atanas Toshev, Head of the Building Control Directorate, a lawyer at the same Directorate and an official from the Humanitarian Activities Directorate. Mr Toshev explained the actions of the municipality aimed at removing the Roma houses in view of the resulting situation with protests and public pressure on the part of initiative committees with their demands. Otherwise, as can be seen from the Action Plan of the Asenovgrad Municipality for Roma integration (2014 –2017), the municipal authorities had known at least since 2014 about the illegal Roma buildings: "in the town of Asenovgrad, between Lale Bair Street and the new cemetery park at Minyor Street, there is a territory outside the town's urban planning, with a compact Roma population where about 230 illegal buildings had been erected."[49] The Roma neighbourhood Loznitsa in Asenovgrad is divided in two parts: the lower part is legal and regulated, while the upper part is illegal and not regulated, the land is privately owned or municipal property, stretching from the town to the new cemetery. That was precisely the district also cited in the Action Plan of the Asenovgrad Municipality for Roma Integration (2014 –2017), where about 230 houses had been built by 2014.

48 "Deputy Prime Minister Valeri Simeonov: the State's commitments to solve the problem with the ethnic tension in Asenovgrad have been fulfilled," *www.focus-news.net*, 24 April 2017, also accessible on the Internet at: http://www.focus-news.net/news/2017/08/24/2428678/vitsepremierat-valeri-simeonov-izpalnenie-sa-angazhimentite-na-darzhavata-za-reshavane-na-problema-s-etnicheskoto-naprezhenie-v-asenovgrad.html.

49 The Municipal Council – Asenovgrad. (2014). *Action Plan of the Asenovgrad Municipality for Roma Integration (2014 –2017), adopted with Decision No. 1767/17 December 2014*, p. 9, accessible on the Internet at: http://www.assenovgrad.com/userfiles/file/docs3/Asenovgrad-plan-deistvie-romi.doc.

According to the explanations of the municipal officials in August 2017, the strategy of the municipality was to start the demolition of all illegal houses from those that are furthest from the town, i.e., the most recently built – from the cemetery park towards the town. No alternative housing was offered to those in need, although the municipality has 6-7 vacant municipal houses. There are no social services for finding accommodation on the territory of the municipality, the closest such services being in the city of Plovdiv. According to the representatives of the municipality with whom BHC spoke, the authorities had not investigated whether the houses planned to be demolished are actually the only housing for the affected persons. With a view to assessing the housing needs of those affected, they drafted a general information based on available documents and municipal databases on these persons, which was submitted in a report to the Mayor of the municipality, which was for internal use, not for undertaking any measures vis-à-vis the persons affected. The information was drafted only after the designation orders had been issued. On the day of the demolition, officials of the municipality were present at the site, engaged in some kind of social survey.

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

According to officials at the municipality, the victims were not informed of the exact date and time of the coercive demolition of their homes, which was imminent after they had not complied with the order for voluntary demolition. That information was confirmed by all victims with whom BHC talked on the spot in the Loznitsa district. According to the municipal officials, a municipal warehouse had been made available for the belongings of the persons whose homes had been demolished, but the victims explained that they had not been offered the option of using it. During the first wave of demolitions, 16 buildings were destroyed on 21 July 2017, which – according to the municipal

officials – were light shacks made of planks, plastic sheets, i.e., movable premises that could not be categorised under Article 137, Paragraph 1, items 1 –6 of SpPA. These buildings were on municipal land. Two of them were for farming needs, eight – for housing (most of them were inhabited by one person per house, one house – by two adults and one house – by a family with two children). Six of them were demolished voluntarily. No alternative accommodation was offered to the persons affected.

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

On 4 October 2017, according to data from the media, 18 illegal buildings were planned for demolition in the Roma neighbourhood in Asenovgrad. The notifying letters about voluntary removal of the illegal buildings were to be handed to the inhabitants by 8 October. Mr Atanas Toshev, Director of the Construction and Urban Planning Municipal Directorate, unformed that the intention was to demolish housing and farm buildings located outside the town's regulation, built not on own terrain and lacking any documentation. Since the start of the campaign against illegal construction in the Roma district of Loznitsa in July, 65 penal orders for illegal construction were delivered. The demolished buildings numbered 36, whereby 27 of them were removed coercively, and nine were demolished voluntarily by their owners. Municipality officials with the assistance of the police conducted inspections

twice a month for illegal construction in the Roma neighbourhood. Social workers also participated in the committee, but until that moment there were no people wishing to be accommodated in municipal housing.[50]

The administration in Asenovgrad explained before the media that 68 statements of findings identifying illegal construction in the Lakovo locality in Asenovgrad were drafted on 25 October, referring to a total of 90 housing and farm buildings. A total of 65 orders for abolishing the illegal construction were drafted; 17 of the orders are appealed in the Administrative Court in Plovdiv. A total of 48 buildings were demolished: 12 of them voluntarily and 36 coercively. The team of officials from the Asenovgrad Municipality formed so as to find illegal construction in the Lakovo locality comprised also a staff member from the Humanitarian Activities Directorate, who conducted conversations with the persons and drafted social surveys with the aim of identifying their social status. A total of 41 surveys were drafted and the information from them was summarised and submitted in a report to the Social Assistance Directorate in Asenovgrad. The number of the social surveys drafted does not correspond to the number of orders issued, because a part of the buildings belonged to unknown persons. During the last three visits to the Lakovo locality there were also officials from the Social Assistance Directorate in Asenovgrad. They clarified the social status of the persons and families, and consulted them, if necessary. Three applications for accommodation in municipality housing were filed with the Asenovgrad Municipality and one for filing in 2018. The Social Assistance Directorate in Asenovgrad consulted two persons with health problems. They were offered accommodation in suitable social institutions, but they refused in writing.[51]

The *Orlandovtsi* case in the city of Sofia

On 25 October 2017, the Bulgarian Helsinki Committee (BHC) received information about at least 50 people from the Orlandovtsi district in Sofia, no less than 30 of whom were children, who had become homeless after their only homes were destroyed on the order of Engineer Todor Krastev, Mayor of the Serdica District of the Sofia City Municipality. According to the available information, all the families were of poor people, and their homes were

50 "18 buildings in the Roma neighbourhood in Asenovgrad are demolished," *www.dnes.bg*, 4 October 2017, accessible on the Internet at: http://www.dnes.bg/stranata/2017/10/04/butat-18-postroiki-v-romskata-mahala-v-asenovgrad.355300.

51 "Roma from Asenovgrad with illegal houses complain in Europe," *Marica.bg*, 26 October 2017, also accessible on the Internet at: https://arhiv.marica.bg/ роми-от-асеновград-с-незаконни-къщи-се-жалват-в-европа-news810779.html.

demolished irrespective of the proportionality of the measure and without offering them alternative accommodation.[52]

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

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

In October the BHC LDP provided legal aid and representation before court to three families from the Orlandovtsi district in connection with the planned demolitions of their only homes. The total number of people affected by the actions of the authorities in those three families was 22, among whom babies, young children and minors, and elderly people with severe health issues. The LDP applied before the ECtHR for interim protection measures for those families. The LDP asked the Court to indicate to the authorities not to demolish the homes of the families until shelter had been provided to them. The authorities had provided no shelter to any of the families. What is more, the authorities had not handed demolition orders to the families, thus depriving them of the chance to defend themselves before a Bulgarian court. The ECtHR met the request by the BHC LDP and instructed the authorities not to abolish the only homes of the families before providing guarantees that alternative shelter would be provided to them. The Court also decided that it would examine

52 Press release: "The central and the local authorities must assume responsibility for the miserable families with children from the Orlandovtsi district in Sofia," *Bulgarian Helsinki Committee*, 27 October 2017, accessible on the Internet at: http://www.bghelsinki.org/bg/novini/press/single/20171027-press-Orlandovtsi-BG/.

the cases submitted to it with respect to the three families with priority. The cases were still pending in January 2018. The houses of the three families are not yet demolished, unlike more than 30 other illegal buildings of citizens of Roma origin in the Orlandovtsi district, some of which date back several decades.

The *Batalova Vodenitsa* case in the city of Sofia

The BHC provided legal aid and representation before court to five families from the Batalova Vodenitsa segregated Roma neighbourhood in the Serdica district of Sofia in connection with actions by the authorities to demolish their only homes that are illegal buildings, without offering them alternative shelter. The total number of people affected by the actions of the authorities in these five families is 40, among whom there are babies, young children and minors, and pregnant women. All five houses scheduled for demolition were built more than three decades ago and are massive buildings. None of the families had enough money to buy or rent alternative housing.

The BHC helped the families to appeal the acts of the local authorities in the procedure of demolishing their homes. The case of one of the families had already been communicated by BHC to the ECtHR. The other cases await the exhausting of the legal remedies for protection at national level. In January 2018, none of the families was offered alternative accommodation by the authorities.

Other cases of evictions

On 22 August 2017, according to information in the media, five of the 143 houses indicated for demolition in the Zaharna Fabrika district in Sofia were destroyed. Some of them are shacks, others are solid buildings. A total of 50 people were taken out of their homes; 540 people proved to be registered at the same address.[53]

According to the media, the illegal Roma houses in the Kazmera district in Kazanlak were demolished on 15 June 2017. The municipal authorities started the campaign back at the end of 2016. Initially statements of findings were

53 "143 illegal Roma houses are being demolished in Zaharna Fabrika," article and video recording, *Nova TV*, 22 August 2017, accessible on the Internet at: https://nova.bg/news/view/2017/08/22/191012/ събарят-143-незаконни-ромски-къщи-в-захарна-фабрика /.

issued for 13 dangerous and crumbling buildings and for two that are outside the law. They were built on municipal land. The Kazanlak municipality had notified the people living in the illegal premises to take actions on their own to move and to demolish the buildings before coercive demolition was undertaken.[54]

On 24 August 2017, according to data in the media, more than 20 illegal buildings in the Pobeda district in Burgas were demolished during a campaign of the municipality, police and gendarmerie. A part of the Roma houses were dismantled voluntarily several days earlier, while the rest were demolished using heavy machinery. In the words of the Mayor, the listing and description of the illegal buildings was an ongoing process, with another 10 houses being demolished in July. The Mayor's office in the Vazrazhdane district explained that the social services were ready to accommodate the families that had nowhere to go, but no requests had been filed with them to that effect. There are a total of 40 illegal houses, some of which were removed voluntarily by the Roma.[55]

In March 2017, an analysis by the non-profit Equal Opportunities Initiative Association and the Open Society European Policy Institute was published, outlining the principal issues in the legislation and in the practice connected with the evictions of the Roma houses.[56] The analysis also reaches the conclusion that the issuing and the execution of orders for the demolition of illegal houses affects particularly adversely and unproportionally the Roma families above all. This is proven by the fact that 97% (or 500 of a total of 514) orders by the Directorate for National Construction Control (DNCC) concerning residential buildings, issued in 2010 –2012, target only homes of Roma citizens. According to data collected from 61% of all municipalities in Bulgaria, 89% (or 399 out of all 444) orders concerning residential buildings, issued by the local administrations, target only homes of Roma citizens. The administrative practices applied during the demolition of the only homes of

54 "Illegal Roma houses in Kazanlak are being demolished," article and video recording, *Nova TV*, 15 June 2017, accessible on the Internet at: https://nova.bg/news/view/2017/06/15/185115/ събарят-незаконни-ромски-къщи-в-казанлък-видеоснимки/.

55 "The demolition of the illegal Roma houses in Burgas continues," article and video recording, *Bulgaria on Air*, 25 August 2017, : https://www.bgonair.bg/bulgaria/2017-08-25/sabaryane-to-na-nezakonnite-romski-kashti-v-burgas-prodalzhava.

56 Mihaylova, D., and Kashumov, A. (2017). *The demolition of illegal houses in the Roma neighbourhoods: Sustainable solution to the Roma integration or to the problem of the discrimination of the Roma in Bulgaria?* Sofia: Equal Opportunities Initiative Association 2017, Sofia, accessible at: https://www.equalopportunities.eu/docs/REPORT-2017-bg.pdf.

Roma families, are in violation of norms in international law for protection against discrimination, adopted by Bulgaria. There was no discussion on a possible reasonable alternative prior to the demolition; the affected families were not offered adequate alternative accommodation and in practice they remained homeless – without a possibility to be registered at a new permanent address, which hampers the issuing of regular identity documents and hence the access to fundamental rights and services. According to the analysis, there is no accurate statistics concerning the number of the illegal housing facilities in the segregated Roma neighbourhoods, but they are considered to be at least one quarter of all houses in those areas. The local authorities are not in a position to offer an adequate solution to the problem due to insufficient or non-existent availability of municipal and social housing. For this reason, orders issued for the demolition of illegal houses in the Roma neighbourhoods in response to demands by citizens are often not executed for years. However, once issued, these orders have no statute of limitation and are activated sporadically during election campaigns or when there is intensified investment interest in the respective places.

According to the analysis, the practices of removing illegal buildings that are the only homes of Roma in the segregated areas do not contribute to a lasting resolving of the problems with the housing situation of the Roma minority and are in contradiction to the country's adopted long-term strategy for integration of the Roma population. Due to the fact that the affected families are not provided any housing anywhere and remain homeless, as a rule, they remain to live in the same neighbourhoods: initially they stay for a while with relatives and in a few weeks or month they build something to live in – at the same place where their former demolished homes were, or in immediate proximity. A serious obstacle before the improvement of the practices related to the illegal only homes of people in segregated Roma neighbourhoods can be seen in the delayed implementation of most of the principal goals under the third priority of the National Strategy for Roma Integration of the Republic of Bulgaria (NSRIRB): improvement of the housing conditions, including the adjacent technical infrastructure. The main problem is the lack of effective results for the stated goal of "improving and complementing the legislation in the sphere of the housing conditions," both for creating possibilities to legitimise the buildings fit for living, and for synchronisation of the legislation regulating the illegal construction with the stated norms and principles of non-discrimination. Another major problem is

the non-attainment of the stated goal for a systematic communication plan to raise public awareness about the integration policies. In the priority sphere connected with improvement of the housing conditions of the Roma population, the absence of systematic communication on the part of the central and the local administrations, both with the affected persons and with the majority intensifies the interethnic tension: the anti-Roma moods among the majority and total lack of trust in the institutions among the Roma. The prevalent part of the executed orders for mass demolition of the Roma houses was during the 2012 –2016 period, when there was a clear tendency towards intensification of the anti-Roma actions and conflicts, especially in 2014 –2015. The passiveness of the responsible institutions with respect to the growing conflicts and manifestations of anti-Roma actions, and the lack of explanatory activities on the need of integration and planned policies, in practice block the implementation of NSRIRB. [57]

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In 2017, the ECtHR delivered several judgements in connection with the right to private and family life. On 19 January, the Court ruled on the case of *Dimova and Peeva v. Bulgaria*. After the divorce of the first applicant with the father of the second, she exercised custody over the child, while the father had a certain schedule of personal contacts. The mother had the obligation to inform the father about every change of the address at which she was raising their child. In 2009, Ms Dimova filed a claim asking the court for permission the child to leave the country without the father's consent. She claimed to be in a serious relationship with a Bulgarian living in the UK, the plan being for them to get married and the applicant to live with him and with her daughter. The District Court rejected her request on the grounds that this would be an obstacle for the personal contacts of the child with her father. The second instance granted the mother's request, while the Supreme Court of Cassation suspended the execution of the decision until the final judgement. In 2010, the SCC ruled that there were no clear guarantees concerning the ways in which the father would continue to exercise his personal contacts with the child and there was no change in that regime, the practice being to give a substitutive consent for the child's travel to precisely specified destinations and for a limited period of time. Subsequently the first applicant married her fiancé

57 Mihaylova, D. and Kashumov, A. (2017). *The demolition of illegal houses in the Roma neighbourhoods: Sustainable solution to the Roma integration or to the problem of the discrimination of the Roma in Bulgaria?* Sofia: Equal Opportunities Initiative Association 2017, Sofia, accessible at: https://www.equalopportunities.eu/docs/REPORT-2017-bg.pdf.

in the United Kingdom and the father signed a declaration that he agreed the child to live with her mother, maintaining constant communication with her father. The ECtHR found that there was no violation of Article 8 in the concrete cases, because the restrictions before the two applicants rested on provisions in the law aimed at guaranteeing the rights of a third person. The Court did not deem it necessary to examine the complaint under Article 13.

On 19 January, the Court gave a ruling on the case of *Posevini v. Bulgaria*. The applicants were four: one Russian male citizen and three Ukrainian women. The first applicant is a photographer and owner of a photographer's studio in Plovdiv. After the Bulgarian police received a signal for forged Bulgarian identity documents, the Public Prosecutors' Office in Plovdiv filed a request to the Court for permission to search the photographer's studio, the car and the home of the applicant and for seizing evidence. The Court granted permission and on the next day, just when Mr Posevin was coming out of his home, he was met by three police officers. During that time he was alone with his two daughters and his wife was in another town. Witness accounts on the way in which the home was searched differ substantially. Nearly two hours later, during which the applicant was with handcuffs, the police seized objects and then led the man out before the eyes of everybody, searched his car but did not take anything from it. After that they made him go into the police car to be taken to the photographer's studio in a busy street in Plovdiv, from where they took quite a lot of things. During all that time they never showed the search warrant to the applicant. He was searched, too, without having permission for that and the objects found were seized. Later that action was approved by the court. The expert investigation did not find incriminating facts, and the objects seized were partially returned to Mr Posevin. Later neither he, nor his wife were charged with having committed a crime. The applicants complained that the search of the home and the arrest of the first applicant in an unnecessarily brutal and public way, and the fact that he was kept with handcuffs and hands behind his back for the entire duration of the arrest, violated Article 3 of the Convention. The ECtHR did not admit that complaint as the domestic protection remedies had not been exhausted. The Court found no violation of Article 8 on account of the search and seizures from the home and from the photographer's studio, because there had been preliminary judicial review and reasonable grounds to assume that a crime had been committed. Concerning the search of the e-mails, the Court found that complaint to be clearly unfounded as the applicant himself gave

his password to the investigators and invited them to inspect his mail. The ECtHR found violation under Article 13 only insofar as it is linked to Article 8, because the applicants had no access to a procedure that would allow them to dispute the legality of the searches and seizures, and to receive compensation accordingly. The Court also deemed it unnecessary to examine the complaints under Article 6.

In its judgement of 6 April 2017 on the case of *Aneva and Others v. Bulgaria* the Court accepted that Bulgaria had violated Article 8 of ECHR. That case unites three proceedings and concerns three different cases filed by four applicants. Three of the cases involve parents who had been hampered to have contacts with their children, in spite of the existence of court judgements giving them parental rights or a specified regime of personal relations. The first case was filed by Vladimira Aneva and Mihail Ivanov, mother and son. Ms Aneva divorced her husband in 2004, three years after the birth of the second applicant, on the grounds of harassment, and the Court granted custody to her. In the meantime, in 2005, the father kept the child with him and declared that he would return it to the mother only of she came back to live with him. Ms Aneva obtained a writ of execution against the father, which bailiffs failed to enforce after numerous attempts. Later the applicant also obtained the judgement with which the Court ordered the child to be taken out of his father's home and given to the mother. That was not done either. The criminal proceedings against the father for failing to comply with an effective judgement ended with his release from criminal liability. At the time the complaint before the ECtHR was filed, in 2014, the second applicant still lived with his father and did not wish to see his mother, in spite of her numerous attempts to get in contact with him. The second application was filed by Slaveyka Kicheva. She exercised custody over her son (born in 2005) after parting with the child's father. In spite of that, in September 2011, the father refused to return the child to his home after the end of one of their prearranged meetings. Afterwards the mother saw the child only several times, moreover in an institutional environment, always in the father's presence. In one of her attempts to get in touch with her child the mother went to the home of her former husband, where she was hit on the face and pushed to fall on the floor by him, all of which happened before the child's eyes. The mother tried several times to use the services of a private bailiff, but he refused on the grounds that the case was too complicated. The mother subsequently contacted a state bailiff who took the case, but the father either did not come

at all to the planned meetings for handing the child over, or did not bring the child with him. At the time when the complaint was filed with the ECtHR the child did not wish to see his mother and was found to suffer from extreme form of parental alienation. In the third case – of Stanimir Drumev – the Court found no violation. Mr Drumev has a certain regime of personal contacts with his daughter after he split with her mother. He claims that the mother hampers their meetings. Subsequently the government refuted the applicant's assertions by finding out that he had not been sufficiently active in initiating contacts with his daughter and the child had lost touch with him. With respect to Ms Aneva and her son, as well as with respect to Ms Kicheva, the Court found violation of Article 8, both cases being characterised by clear lack of cooperation on the part of the other parent, who systematically hampered the efforts of the authorities to reunite the first and the third applicant with their children and the second applicant with his mother, and explicitly drew attention that this fact does not free the authorities of their responsibility to do everything that was necessary to facilitate the reunification. With regard to Mr Drumev the Court accepted that it was not possible to claim that the authorities had failed to act in a timely and adequate manner, and hence found no violation of Article 8.

On 19 October 2017, the ECtHR delivered a judgement on the case of *Lebois v. Bulgaria*. The applicant is a French national who has been living in Sofia since 2013. In the early hours of 24 January 2014 he was caught by a police patrol while breaking into a car with the aim of theft. He was taken immediately to the Regional Police Department (RPD), he was not given access to a telephone and was locked with handcuffs to a bench in the corridor. While he was at the police precinct he did not receive food or water, and he was not allowed to use either the toilets or a telephone. He was visited by a lawyer appointed *ex officio*, who did not speak French and spoke very little English, and did not explain anything to Mr Lebois. In the late hours of the same day the applicant was transferred to a detention facility in Sofia. On one of the subsequent days he was brought before court, which confirmed the detention measure. On being transferred to the places of detention, the applicant received a mattress, a pillow and a blanket, dirty and without bed linen. He received no food and water until noon on the next day. The cell was very dirty, cold, poorly ventilated, overcrowded and with a toilet that was not separated from the cell. He did not receive toilet paper or toiletries, and was unable to take a shower for two weeks. On the third day he had a rash and asked to be examined by a

physician, who looked at him from a distance, without entering the cell, and he was diagnosed with infection. Having no money, he could not buy a telephone card to call his relatives, being able to do that with the help of another detainee only on 5 February 2014, when he contacted the French Consul. With his assistance, Mr Lebois contacted his relatives, received money and a food parcel, as well as attorney aid. Owing to him, he reached an agreement with the Public Prosecutors' Office and was sentenced to three months imprisonment, which he had already served in the places of detention. The ECtHR did not examine the complaint under Article 3 because it was filed after the expiry of the six-month period. With respect to his complaint that the authorities had not notified his family or had not provided him an opportunity to inform them, the Court also found that the complaint had been filed after the deadline. The situation was different with the complaint that during the detention period the authorities created all kinds of obstacles when he wished to meet with his relatives while he was detained, and the ECtHR found violation of Article 8 of the Convention, because the restrictions imposed on visits did not rest on any provision in the law.

On 7 December 2017, the ECtHR gave a ruling on the case of *Yonchev v. Bulgaria* concerning the refusal by the MoI to give to one of its staff members access to his file, citing information from it on the basis of which the institution refused to allow him employment in planned international police operations. After having participated in several similar operations in 2001, the applicant Yonchev received a refusal to be included in a forthcoming one on the grounds that his psychological evaluation showed him as unfit. In 2003 he tried to obtain access to his personal file under the Personal Data Protection Act (PDPA) with a view to familiarising himself with the documents concerning his psychological adequacy. After two refusals, revoked by different court instances, in 2006 the Minister of Interior issued a third refusal, citing the provisions of Article 34, Paragraph 3 of PDPA and Article 161 of the 2006 MoI Act and the motive that the personal files of MoI officials contain, *inter alia*, also documents that are classified information. The applicant appealed that refusal, too, before court, citing – among other things – the circumstance that if his file contained classified documents, the time during which they could be classified should have expired because he had stopped working at the Ministry in 2002. His complaint was rejected by panels with three and with five SAC judges, reiterating the Minister's motives that the presence of individual classified documents in the file gave grounds for it to be classified

in its entirety, and the declassification did not occur upon the expiry of the period for classification, but with a special act of the respective competent official. The ECtHR found violation of Article 8 of the Convention. According to the judgement, the Bulgarian government had failed to prove that any document in the applicant's file was classified. The Court indicated that SAC had not studied which documents in the applicant's file potentially met the requirement to be classified, which were actually classified, as well as at what time they were classified. Classifying the entire file on the grounds that a part of the documents in it were allegedly classified prevented the authorities to grant partial access to the applicant, insofar as he had concrete interest in the documents concerning his psychological evaluations. For that reason there had been no effective and accessible procedure for access to the information relevant to the applicant's psychological adequacy, which the authorities are obliged to provide under Article 8 of the Convention.

7. Freedom of Conscience and Religion

7.1. Muslims

In 2017, as well as in preceding years, a number of hate crimes were registered, targeting the Muslim religious denomination in Bulgaria. Parallel with that, the United Patriots, a coalition partner in the government, tabled a bill in Parliament against "radical Islam" and it passed first reading. If this draft legislation becomes a fact, it is highly probable that the religious freedoms of many denominations in Bulgaria, including of the Muslims, would be restricted.

During the past 2017 the Chief Mufti's Office registered a series of attacks against Muslim places of worship.

- During the night of 7 February 2017, unknown persons fired at the security cameras and at the lighting of the mosque in the town of Silistra with a 5.5 mm air rifle. Just several months earlier, on 9 December 2016, unknown persons made an attempt to set the mosque on fire with seven Molotov cocktails thrown at the façade of the mosque. Signals were sent to the police about both incidents, but the perpetrators were not found.
- In May 2017, unknown perpetrators smashed the windows of Imaret Mosque in Plovdiv.
- On 28 May, the second day of the sacred Muslim month of Ramadan, football hooligans threw beer bottles and parts of trash cans at the Sofia Mosque. Passing by the mosque building, they also addressed rude and insulting qualifications against the Muslims, the Turks and the Islamic religion. According to witnesses, the police officers who stood nearby refused to react.

- On 28 July 2017, the construction of a residential building with shops of the Muslim denomination started in the Orlandovtsi district in the city of Sofia. The project has been approved with an effective building permit. Part of the residents of the district protested against the construction, claiming that an "asylum for radicalists" was being built. Later unknown persons placed a pig's head on the fence of the construction site and threw another one in the actual property. The Muslim community perceives this act as a threat of physical mob law.

In early December, the Bulgarian Parliament adopted at first reading amendments to the Criminal Code, according to which imprisonment of one to five years and a fine of BGN 5,000 (EUR 2,500) would be imposed upon persons preaching radical Islam or another ideology using religious beliefs for political goals. The bill was tabled by the United Patriots. According to the text adopted at first reading, "radical Islam" is "when a person lobbies for the creating of an Islamic state (caliphate), when he/she lobbies for the imposition of Sharia law over secular laws, for coercive applying of religious principles, preaching violence in the form of a holy war against non-Muslims, lobbies and recruits followers for terrorist organisations based on Islam."

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

deeply ingrained religious faith, criminalisation of the respective forms of expression, which the bill stipulates, is inadmissible.

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

7.2. Jehovah's Witnesses

On 30 July 2016, a French national, follower of Jehovah's Witnesses, was assaulted in the town of Shumen and sustained a moderately bodily injury. The Public Prosecutors' Office brought charges of injury driven by hooligan motives under Article 131 of the Criminal Code, which did not take into account the discriminatory motives for the crime. In 2017 the Court imposed a suspended sentence of three years imprisonment to the perpetrator with a five-year probationary period.

During the past year incidents were registered in Elhovo, Mezdra, Pernik and Vratsa, whereby representatives of Jehovah's Witnesses were intimidated and insulted. On 15 January 2017, a group of young people in Lom banged the door of a place of worship of the organisation and screamed that they were there to prevent illegal meetings, after which they broke in with force. The police was called, but the youngsters left before it arrived. On 11 July 2017, a house of prayer of the organisation in Popovo was vandalised. Eggs and stones were thrown at the building. That was the third such incident in the town within nine months.

On 5 January 2017, the Supreme Administrative Court delivered its final judgement after appeal by SKAT Television, found guilty by the CPD in 2016 for disseminating false information about the Jehovah's Witnesses and for

inciting to violence against them. The SAC rejected the complaint. Earlier it was rejected by the Burgas Administrative Court as well.

In 2017, there were 44 municipalities in Bulgaria that voted ordinances restricting the right to peaceful preaching of religious beliefs. Representatives of the Internal Macedonian Revolutionary Organisation (IMPRO), one of the parties in the ruling coalition in Bulgaria and principal initiator of such ordinances, indicated repeatedly that the aim was to restrict precisely the activities of Jehovah's Witnesses. So far that organisation had filed and won a total of eight cases against fines imposed as a result of similar ordinances. In all cases the administrative courts ruled in their favour. Municipal ordinances were revoked in Burgas, Kavarna, Asenovgrad, Karlovo and Mezdra, and in Kyustendil, Stara Zagora and Shumen the municipalities are appealing the decisions before the higher instance.

Jehovah's Witnesses note the absence of assistance by the state institutions, and at the local level they encounter strong opposition.

7.3. Anti- Semitism

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

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

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

7.4. Eastern Orthodox religions

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

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

On 15 June 2017, the ECtHR gave a ruling on the case of *Metodiev and Others v. Bulgaria*. The Court found violation of Article 9 in connection with Article 11 of the European Convention on Human Rights (ECHR) due to the refusal by the authorities to register a new religious association by the name of Ahmadiyya Muslim Community under the Religious Denominations Act (RDA). The refusal was stipulated by the Sofia City Court (SCC), because the Ahmadiyya movement is perceived to be a sect by Muslims in the world and hence its

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

8. Freedom of Expression

8.1. General situation

The drastic deterioration of the freedom of expression in Bulgaria continued at breakneck speed in 2017 as well. The year was marked above all by unprecedented political pressure, attacks and threats to journalists and media. Beyond that, the levels of self-censorship remained alarmingly high, many media continued to play the role of guardians of the comfort of the rulers and "bludgeons" against their opponents; the authorities continued to "pay" them through advertising contracts and media coverage. For yet another year we observed non-transparent ownership and financing, trampling on basic ethical rules on a mass scale, lack of clear differentiation between editorial and paid content. Hate speech triumphed, and fake news reached even more absurd and extremely alarming proportions.

Bulgaria remained the country with the least free media in the European Union, according to the World Press Freedom Index of Reporters Without Borders.[58] The country ranks 109th in freedom of the media out of a total of 180 countries, and is the first country with which the category "Difficult situation" in the Index starts. There are only three other such states in Europe: Macedonia, Russia and Turkey. The Index summarises a series of indicators: pluralism, independence of the media, self-censorship, legal frameworks, transparency, etc. In principle, Bulgaria climbed four positions in the ranking compared to last year, but actually recorded a decline of 0.55 points in the

58 Reporters Without Borders (2017) World Press Freedom Index, accessible at https://rsf.org/en/ranking

Index, i.e., its improved position is due to the deteriorated situation in other states, not to improvement in the Bulgarian media environment. For the sake of comparison, in 2006 Bulgaria occupied the 35th position in the Index. The reasons pointed out by Reporters Without Borders for the evaluation comprise "an environment dominated by corruption and collusion between media, politicians and oligarchs, including Delyan Peevski (...) owner of the New Bulgarian Media group. His group has six newspapers and controls nearly 80% of the print media distribution"; as well as "the government's allocation of EU funding to certain media outlets is conducted with a complete lack of transparency, in effect bribing editors to go easy on the government in their political reporting or refrain from covering some problematic stories altogether."[59]

For yet another year, Freedom House also declared the media in Bulgaria as "partly free."[60]

In its annual online survey on the freedom of speech in the country, the Association of European Journalists in Bulgaria (AEJ-Bulgaria), with participation of a record number of journalists from all over the country in 2017: 200, 42.4% of respondents evaluated the freedom of speech in Bulgaria as "poor," 27.8% – as "very poor," 25.3% – "satisfactory" and only 4.5% – "good."[61]

A number of media, headed by the websites PIK and BLITZ, continued to spew fake news, slander, lies and manipulations, being used for "political errands" and settling scores with certain people who were uncomfortable to those in power. At the same time, the fake news were no longer aimed at undermining the prestige of the European institutions and at discrediting the Euro-Atlantic values – one of the principal conclusions of the cited survey of AEJ-Bulgaria is that fake news in Bulgaria is also a means of exercising external pressure on inconvenient journalists. More than 40% of the respondents define "the spreading of slander" against journalists and media as a way of interfering in the work of the journalists and as a means of discrediting them. Against this background it seems even more disturbing that Bulgaria ranks last among the EU Member States in media literacy, according to a comparative analysis of

59 Reporters Without Borders (2017) World Press Freedom Index, Bulgaria profile, accessible at https://rsf.org/en/bulgaria

60 Freedom House (2017) Freedom of the Press Report, Bulgaria profile, accessible at https://freedomhouse.org/report/freedom-press/2017/bulgaria

61 AEJ-Bulgaria (2017) Report: The big return of political pressure, accessible at http://bit.ly/2kX6mEd

the level of media literacy and of the ability of the states to cope with "post-truth" phenomenon, prepared by the Open Society Institute – Sofia.[62]

8.2. Attacks, assaults

During the year we again witnessed numerous threats and assaults against journalists. The 2017 Media Sustainability Index of the International Research and Exchanges Board (IREX) reported that the aggressive attacks against journalists in the country have become more frequent.[63]

In July 2017, the broadcaster from the Bulgarian National Television (BNT) Ivo Nikodimov was assaulted and beaten up in the Borissova Gradina park.[64] In October the car of investigative journalist Zornitsa Akmanova from the "Lords of the Air [*Gospodari na efira*]" TV show was set on fire in the town of Karlovo. On the next day the police arrested the owner of an automobile repair shop in the town in connection with the incident. The Council of Europe noted that the arson of Ms Akmanova's car was the third case of threats or violence against the team of the "Lords of the Air" in 2017 alone: in July the reporter Dimitar Varbanov announced that he was threatened by a construction company after he reported about dangerous working conditions at a construction site in Veliko Tarnovo. Several months earlier his colleague Eva Vesselinova was assaulted while preparing her coverage of assumed fraud by a construction company in Pazardjik.[65]

In July 2017, Petar Nizamov, known also as "Perata", hit bTV cameraman Petar Dzhanavarov while he was shooting a protest in Asenovgrad.[66] At the same time it became clear in June that Nizamov filed a series of charges against media in the town of Burgas, insisting on financial compensation for

62 See the article "Graph: Bulgaria is at the bottom in media literacy in Europe," 12 October 2017, Dnevnik.bg, accessible at https://www.dnevnik.bg/bulgaria/2017/10/12/3058403_grafika_bulgaria_e_na_dunoto_po_mediina_gramotnost_v/ (visited on 21 February 2018

63 IREX (2017) Media Sustainability Index, accessible at https://www.irex.org/resource/media-sustainability-index-msi

64 See the article "Three men beat up journalist Ivo Nikodimov in Sofia," 25 July 2017, Dnevnik.bg, accessible at https://www.dnevnik.bg/bulgaria/2017/07/25/3012972_trima_muje_sa_bili_jurnalista_ivo_nikodimov_v_sofiia/ (visited on 21 February 2018)

65 AEJ-Bulgaria (2017) Position: "The case with the burned car of journalist Zornitsa Akmanova reached the Council of Europe," accessible at http://www.aej-bulgaria.org/bul/p.php?post=8879&c=340

66 See the article "The Public Prosecutors' Office demanded permanent detention for Petar Nizamov-Perata and two other men for the excesses in Asenovgrad," 6 July 2017, Dnevnik.bg, accessible at https://www.dnevnik.bg/bulgaria/2017/07/06/3002234_prokuraturata_iska_postoianen_arest_za_petur/ (visited 21 February 2018)

publications in 2012, which – in his opinion – attributed crime to him and discredited him.[67]

In November a series of life threats against Georgi Ezekiev, publisher of the Zov News website and the journalist in the website Maria Dimitrova were received. The threats attracted attention and provoked comments by a number of international organisations.[68]

8.3. Pressure, repressions

Physical attacks do not exhaust by far the forms of pressure and repressions to which journalists in Bulgaria are subjected. The online survey on freedom of speech in the country conducted by AEJ-Bulgaria noted the return of political pressure on journalists: "If in 2015 that 'principal role' was performed by the advertising departments in editorial offices and economic factors in different spheres, in 2017 the censorship of political and institutional power returned with a rich array of instruments for exercising influence."[69] Two out of three participants in the survey declare that they know about cases of pressure exercised on their colleagues; 92% believe that the interference in the work of the journalists is a frequent phenomenon. More than 75% of the respondents indicated political pressure as being most widespread in the Bulgarian media, followed by economic pressure (61.6%), pressure by advertisers (58.1%), administrative pressure at state and municipal level (43%) and threats by criminal groups (13.1%). The forms of pressure on the work of journalists include the spreading of slander, indicated by more than 41% of the respondents, blackmail (35.9%), prosecution (29.3%), physical threats (13.1%) and online harassment (11%).[70] More than a quarter of the respondents – journalists – shared that they used self-censorship. A quarter of the respondents said that the poisonous environment in which they worked affected their health. The data on 2017 indicate accumulation of anxiety that the different forms of pressure lead to psychological and health problems for 23.7% of the journalists.[71]

67 AEJ-Bulgaria (2017) Position "It is inadmissible for journalists to pay the price for the absence of adequate justice," accessible at http://www.aej-bulgaria.org/bul/p.php?post=8362&c=340

68 AEJ-Bulgaria (2017) Position "AEJ Chairman met with the Director of the Directorate General for Combating Organised Crime in connection with the threats against a Bulgarian journalist and editor," accessible at http://www.aej-bulgaria.org/bul/p.php?post=8929&c=340

69 AEJ-Bulgaria (2017) Report: The big return of political pressure, accessible at http://bit.ly/2kX6mEd

70 *Ibidem*.

71 *Ibidem*.

In addition, the joint report of the Media Democracy Foundation and AEJ-Bulgaria – *Being a Journalist: State of the Profession* – notes that the journalists in the regional media are exposed to more serious influence, "where a serious dependence on the local authorities is observed, in particular through the contracts for information services."[72]

2017 was a year of inadmissible, brazen and outright public political pressure on journalists. In October Anton Todorov, then MP from GERB and Vice Chairman of the Anti-Corruption, Conflict of Interests and Parliamentary Ethics Committee in Parliament, took the liberty of exercising absurd pressure on the leading broadcaster of the *Hello, Bulgaria* morning show on NOVA TV, Victor Nikolaev:[73] "You are using very strong words. They'll eat your daily bread. They already ate the bread of your colleague. She, too, had taken off in some direction, but I see that her chair is empty," Todorov said, commenting Annie Tsolova's withdrawal from the show. The threats against Nikolaev were repeated in the same show on that day also by Deputy Prime Minister Valeri Simeonov. He also referred to Annie Tsolova's empty chair: "Look, your colleague was here, and now you are alone" and added: "Tomorrow, if my intentions are evil, I shall develop a "Victor-gate."[74] In response, more than 100 journalists from different media supported the protest to defend the journalists, organised by AEJ-Bulgaria on 11 October in front of the Council of Ministers.[75]

At the same time, Valeri Simeonov accused the national media – the Bulgarian National Radio (BNR), BNT, NOVA TV and bTV – of waging a "massive organised smear campaign" against him. He threatened them with court and gave them 24 hours to apologise. In a statement disseminated by the government information service Simeonov referred to "women journalists maliciously grinding their teeth," "media puppeteers" and "media ill-wishers" and accused the national televisions of failing to present his opinion on the case with the threats against Victor Nikolaev.[76] "We see no reason to offer apologies for the

72 Media Democracy Foundation, AEJ-Bulgaria (2017) Report: Being a Journalist: State of the Profession, accessible at http://fmd.bg/wp-content/uploads/2017/10/JournalistProfessionBG2017.pdf

73 AEJ-Bulgaria (2017) Position: AEJ calls for media boycott of rulers threatening journalists, accessible at http://www.aej-bulgaria.org/bul/p.php?post=8682&c=340

74 See the article "When power threatens journalists in live broadcasts," 6 October 2017, *Capital* weekly, accessible at https://www.capital.bg/biznes/media__i__reklama/2017/10/06/3055148__kogato__vlastta__zaplashva__jurnalisti__v__efir/ (visited on 21 February 2018)

75 See the article "A wide range of journalists supported the protest in defence of the right to ask questions," 11 October 2017, AEJ-Bulgaria, accessible at http://www.aej-bulgaria.org/bul/p.php?post=8710&c=366 (visited on 21 February 2018)

76 See the article "BNR replied to Valeri Simeonov's ultimatum and defended its journalists," 9 Oc-

fact that the Radio is fulfilling its duties of a public media," the management of the Bulgarian National Radio declared in an open letter to the media in response to the ultimatum.

The intimidations of the leading journalists started back in the summer. In June, in the studio of the *Hello, Bulgaria* morning show, MRF Member of Parliament Yordan Tsonev turned to the team of the show with the words: "Delyan Peevski sends you his best regards and wishes you lots of success ..."[77] In August, MEP Nikolay Barekov launched a campaign against several journalists concerning their revenues and their lifestyle, expressed in the form of sending unsubstantiated signals against to the law enforcement institutions.[78] Subsequent inspections found no discrepancies in the revenues of the journalists in question.[79]

In 2017 the authorities intensified their pressure against publishers and owners of critical media. In December the Commission for Illegal Assets Forfeiture (CIAF) imposed precautionary measures on the property of the businessman Ivo Prokopiev, including the entire capital of the company that is majority shareholder in Iconomedia – the company that publishes *Capital* and *Dnevnik*; the biggest media in Bulgaria with a critical attitude to the last several governments, to the links of principal political forces represented in Parliament, with private oligarchic interests, as well as the non-transparent agreements on concrete decisions and policies with respect to significant issues in society, notably the reform of the judiciary system and the introduction of mechanisms for accountability of the Prosecutor General. The BHC sharply denounced the actions of the CIAF and qualified them as provoking serious concern. The organisation pointed out that the potential goal in the concrete cases was to stifle one of the few vocal opponents of the authorities, which runs counter to the tenets of the rule of law and bears a risk of the beginning of a political dictatorship."[80]

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tober 2017, *Capital* weekly, accessible at https://www.capital.bg/kakvo_stava/2017/10/09/3056534_bnr_otgovori_na_ultimatuma_na_valeri_simeonov_i/ (visited on 21 February 2018)

77 See the article "Peevski sends his best regards and wishes you creative success," 8 September 2017, Dnevnik.bg, accessible at https://www.dnevnik.bg/analizi/2017/09/08/3038430_peevski_prashta_mnogo_pozdravi_i_vi_jelae_tvorcheski/ (visited on 21 February 2018)

78 *Ibidem*.

79 AEJ-Bulgaria (2017) Position: "Bulgaria must not allow stifling of the media through the state apparatus," accessible at http://www.aej-bulgaria.org/bul/p.php?post=8972&c=340

80 BHC (2017) Position: "The actions of the authorities against Ivo Prokopiev are a blow against fundamental rights," accessible at http://bghelsinki.org/bg/novini/press/single/stanovishte-konpi-economedia/#

In the beginning of the year another media owner who is critical of the authorities – the publisher of the *Sega* daily newspaper Sasho Donchev – indicated that the Prosecutor General Sotir Tsatsarov invited him to a meeting to threaten him.[81]

In January 2018, the Union of the Publishers in Bulgaria (UPB) declared that apart from a strong reaction by society, it is also necessary to secure external intervention and support by European institutions in order to preserve what little is left of the freedom of speech.[82] The publishers submitted several recommendations to the institutions, among which the request for an international investigation to be conducted on the concentration of ownership in the media and their distribution, to send foreign prosecutors to observe the cases of pressure, threats and criminal proceedings against journalists and media, to ensure more control and transparency of the EU funds for communication; media freedom to be among the principal criteria, according to which the EU and the EC determine their policy and the EU funds allocated to the EU Member States.[83]

In the beginning of 2018, the UPB presented its *White Paper on Media Freedom in Bulgaria* – a project of journalists and editors of publications that are UPB members.[84] "If the different groups of problems shown in this *White Paper* are not addressed in good time, the free media in Bulgaria will disappear totally," the *White Paper* reads and points out that "the principal problem consists in the use of the Public Prosecutors' Office headed by Prosecutor General Sotir Tsatsarov, and through it many other state institutions as well, as instruments for exercising pressure and censorship, as a means of repression of political and public opponents. This blocks the functioning of the entire democratic process."

81 See the article "Tsatsarov invited Sasho Donchev for a meeting to threaten him," 19 April 2017, *Mediapool.bg*, accessible at http://www.mediapool.bg/tsatsarov-pokanil-sasho-donchev-na-sreshta-za-da-go-zaplashva-news262843.html (visited on 21 February 2018)

82 See the article "Publishers: Free journalism in Bulgaria is like swimming in sulphuric acid," 10 January 2018, Dnevnik.bg, accessible at https://www.dnevnik.bg/bulgaria/2018/01/10/3109914_izdateli_svobodnata_jurnalistika_v_bulgariia_e_kato/ (visited on 21 February 2018)

83 See the article "The state of the media market in Bulgaria: international investigation is needed," 10 January 2018, Dnevnik.bg, accessible at https://www.dnevnik.bg/bulgaria/2018/01/10/3109470_sustoianieto_na_mediinija_pazar_v_bulgariia_triabva/ (visited on 21 February 2018)

84 See the article "How to solve the problems of the Bulgarian media?" 11 January 2018, *Capital*, accessible at https://www.capital.bg/biznes/media_i_reklama/2018/01/11/3110146_kak_da_se_reshat_problemite_na_bulgarskite_medii/ (visited on 21 February 2018)

8.4. Public media

The ruling power tightened its grip on media freedom also through the choice of the new BNT management. In August the Council for Electronic Media (CEM) elected Konstantin Kamenarov, who enjoys political support by the government, as the new Director General of BNT.[85] In December, Emil Koshlukov[86] – Kamenarov's competitor for the post of BNT Director General, was appointed Programme Director of BNT1.[87] It became known that in the last year Koshlukov worked as Programme Director of the Alfa Television of the *Ataka* nationalist party, a coalition partner of GERB in the government. Immediately after that, News Director Konstantin Kisimov left the television amid assumed attempts at influencing his work for his disagreement with Koshlukov's appointment, as well as following information about cancelled broadcasts and guests.[88]

8.5. Quality

The collapse in the quality of media content in Bulgaria continues. The report *Being a Journalist: State of the Profession* notes that this is the result of a "combination of a number of unfavourable factors: external interferences in the editorial policy, personnel cuts, demands for a large volume of materials to be produced, overworking, shortage of material resource, ineffective management."[89] The report also points out that "the personnel cuts, the merging of positions, the discarding of whole units of the editorial process and increased commitments occur at all levels in the media sector [...] Maintaining thematic domains proves to be a luxury that fewer and fewer editorial offices can afford."

85 See the article "Why is Kamenarov taking over the BNT?" 25 August 2017, *Capital*, accessible at https://www.capital.bg/biznes/media_i_reklama/2017/08/25/3029857_zashto_kamenarov_poema_bnt/ (visited on 21 February 2018)

86 See the article "Emil Koshlukov became Programme Director of BNT1," 15 December 2017, *Capital*, accessible at https://www.capital.bg/politika_i_ikonomika/bulgaria/2017/12/15/3098494_emil_koshlukov_stava_programen_direktor_na_bnt1/ (visited on 21 February 2018)

87 See the article "In the past year Koshlukov was Programme Director of Alfa TV," 8 August 2017, *Capital*, accessible at https://www.capital.bg/biznes/media_i_reklama/2017/08/08/3020954_prez_poslednata_godina_koshlukov_e_bil_programen/ (visited on 21 February 2018)

88 See the article "Turmoil in the BNT," 5 January 2018, *Capital*, accessible at https://www.capital.bg/biznes/media_i_reklama/2018/01/05/3106994_smushteniia_v_bnt/ (visited on 21 February 2018)

89 Media Democracy Foundation, AEJ-Bulgaria (2017) Report: *Being a Journalist: State of the Profession*, accessible at http://fmd.bg/wp-content/uploads/2017/10/JournalistProfessionBG2017.pdf

Sensation dominates the news flow in Bulgaria; crime, disasters and incidents often head the hierarchy of the news in the most popular television and online media in Bulgaria, creating a "catastrophic agenda" – these are a part of the main conclusions in the survey *News... at Close Range* conducted by AEJ-Bulgaria, presented in July.[90] Publishing of materials without citing the author(s) and borrowing information from other media, often without acknowledgement, is widespread in the online space. The survey covers 3,556 journalistic publications during the three months from February to April 2017 in the three national televisions with the highest rating and the five most visited news websites; 1,205 of all texts are with indicated author, without author – 1,112 texts; 1,675 of the texts are characterised as being with high sensationalism, with low – 1,077, and with moderate sensationalism – 762. The "obviously negative/unfavourable bad news" leads with 1,427 texts; the texts that tend to be positive are 149.[91]

8.6. Hate speech and hate crimes

The trend existing for years to allow, approve and even praise speech that instils hatred or incites people to violence against some of the most vulnerable groups in society, continued in Bulgaria in 2017. Hate speech settled permanently in public speaking through the media that often give an uncritical tribune to racist, xenophobic and homophobic views and to anti-minority activists. Rosita Elenova, CEM member, comments: "Hate speech has become a model, if you don't speak in a similar style, you would not be invited to a studio, you are not "interesting." Trampling on dignity, violation of the sacrosanct is the norm, discrimination – everyday occurrence."[92]

In October, Valeri Simeonov, the leader of the ultranationalist party

National Front for the Salvation of Bulgaria, currently Deputy Prime Minister and Chairman of the National Council for Cooperation on Ethnic and Integration Issues, was sentenced at first instance by the District Court – Burgas for his anti-Roma hate speech as Member of Parliament from the rostrum of the National Assembly on 17 December 2014. The case was filed by Roma journalists Kremena Budonova and Ognyan Isaev, represented by

90 AEJ-Bulgaria (2017) Survey *News... at Close Range*, accessible at http://bit.ly/2CAaWM4

91 *Ibidem*.

92 See the article "The media year 2017 year in 365 думи," 2 January 2018, AEJ-Bulgaria, accessible at http://www.aej-bulgaria.org/bul/p.php?post=8995&c=328 (visited on 21 February 2018)

the BHC Legal Defence Programme.[93] The statement for which Simeonov was indicted was: "It is an indisputable fact that [for] a large part of the Gypsy ethnos ... theft and robbery have become a means of subsistence, breaking the law – norm of behaviour, giving birth to children – profitable business at the expense of the State, child care – teaching the minors to beg, to prostitute, to steal and to push drugs." "... Insolent, cocky and brutal humanoids, demanding the right to receive wages without working, demanding sickness benefits without being ill, child benefits for children who play with the pigs in the street, and maternity benefits for women with instincts of stray bitches?..." The Court ruled that these words constituted harassment under the Protection against Discrimination Act, because they "lead to violation of the dignity of the person and create a hostile, degrading, humiliating and insulting environment, and everyone with Roma ethnic belonging can be affected by them, whereby it is not necessary for the statement to refer to the entire Roma community so as to be perceived as violating the dignity of an individual representative of that community, who identifies himself/herself as such." Simeonov was sentenced to put an end to the violation, as well as to refrain in the future from further violations.

In the beginning of 2018, the Commission for Protection against Discrimination "observed with anxiety an escalation of hate speech and discriminatory attitude on account of expressed opinions and stated position on values." CPD cites among the examples of such manifestations the organising of the so-called "Lukov March" that "often turns into a tribune of hate speech, particularly targeting representatives of the Jewish and other communities"; the debates on the Istanbul Convention; and also the comments around the appointment of Emil Koshlukov as Programme Director of BNT1.[94]

The Bulgarian authorities do not cope with the timely and effective investigation of hate crimes. In March the history teacher and candidate for MP from the *Yes, Bulgaria* Movement, Emil Jassim, was assaulted. In the past years he was subjected several times to insults and threats for his attempts to encourage interethnic dialogue and for his defence of the rights of the minority groups in Bulgaria.[95] According to Jassim, a man unknown to him insulted

93 BHC (2017) Press release "Valeri Simeonov was sentenced for anti-Roma hate speech," accessible at http://bghelsinki.org/bg/novini/press/single/20171025-press-Budinova-and-Isaev-v-Simeonov/#

94 CPD (2018) Position "CPD observes escalation of hate speech and appeals for reconciliation," accessible at http://www.kzd-nondiscrimination.com/layout/index.php/component/content/article/29/1103--2018

95 BHC (2017) Press release "BHC sharply denounces the assault against history teacher and candidate for MP Emil Jassim," accessible at http://bghelsinki.org/bg/novini/press/single/

him and then hit him on his body. Shortly before the assault, Jassim filed four slander cases against several media for spreading untrue and defamatory claims: the websites BLITZ, PIK, the *Trud* daily newspaper, and against the Editor-in-Chief BLITZ, Ivaylo Krachunov. For weeks these media published a series of materials accusing Emil Jassim of "anti-Bulgarian propaganda" and thus imposing a negative attitude to him and creating a threatening environment.

The BHC pointed out that hate speech started to leave the confines of the media and the aggression was accordingly directed towards the few organisations and activists who undertook the task of protecting them. The organisation appealed to the police and to the Public Prosecutors' Office to take a clear stand in the fight against the manifestations of racism and xenophobia, notably public inciting to violence or hatred, through timely, comprehensive and effective investigation of hate crimes.[96]

In October 2016, BHC Chairperson Krassimir Kanev was assaulted in front of the Parliament building.[97] The investigation on the case was stopped due to inability to identify the perpetrator. The investigations and the criminal proceedings on many other cases of threats and public instigation against vulnerable groups and persons in Bulgarian society remained without result.

pressobshenie-bhk-oszhda-ostro-napadenieto-nad-uchitelya-po-istoriya-i-kandidat-za-deputat-emil-dzhasim/#

96 *Ibidem*.

97 BHC (2017) Press release "BHC sharply denounces the assault against its President Krassimir Kanev," accessible at http://www.bghelsinki.org/bg/novini/press/single/20161027-press-bulgarian-human-rights-activist-attacked/

9. Freedom of Association

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

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

Article 29, Paragraph 1 of CRRNPLEA admits every person with legal interest, as well as the prosecutor, to present a claim for declaration of nullity or inadmissibility of the registration. Such a claim is filed with the district court

in the seat of the non-profit legal entity. If the claim is deemed valid, the Registration Agency deletes the registration.

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

The idea behind the adoption of the amendments to NPLEA and to CRRNPLEA was to address the long persisting problem of the non-compliance with the group of ECtHR rulings on the refusals to register associations of Macedonians in Bulgaria. No applications for registration of such associations were filed in 2017, waiting for the amendments to come into effect. The extent to which the legislative amendments will be in a position to serve as an effective means of solving the problem is yet to be determined in 2018 and in subsequent years.

◆

On 8 June 2017, the ECtHR gave its ruling on the case on the *National Turkish Union and Kungyun v. Bulgaria*, which found violation of Article 11 of the Convention due to the fact that the Bulgarian courts refused to register an association aimed at encouraging the rights of the Muslim community in Bulgaria. In 2006, the applicant Menderes Mehmet Kungyun, Bulgarian citizen, founder and president of the association, filed an application for registration of the association before the Plovdiv Regional Court. The Regional Court rejected the application, accepting – *inter alia* – that one of the declared goals of the association is of political nature. In this connection, it is emphasised that under the Constitution only political parties may engage in political activities. The applicant appealed the ruling. The Court of Appeal upheld the first instance court, adding that the name of the association should not be misleading and contrary to public morals and that the name "National Turkish Union" implied the existence of a Turkish nation in Bulgaria and suggests that there was a separatist goal. The applicant filed an appeal. The Supreme Court of Cassation rejected the appeal and upheld the judgement of the Court of Appeal. The motive related to the political nature of the association's goals was examined by the ECtHR in earlier cases against Bulgaria. The Court observed that such a motive cannot justify the refusal to register

a certain association. The Court upheld that there was no "compelling public need" to require that any association wishing to pursue political objectives should establish a political party, if its founders have no intention to participate in elections. As regards the motive that the association's goals and name pose a threat to the national security, the Court recalled that the expression of separatist views does not imply a threat to the territorial integrity of the State and to the national security, and does not justify in itself the restriction of the rights guaranteed under Article 11 of the Convention. The use of the terms "national Turkish" in the name of the association does not seem to pose a threat to the territorial integrity or to the unity of the Bulgarian nation. Similarly, the Court does not see how the disputing by the association of the monopoly of one political party in the mixed ethnic regions could constitute a risk to the ethnic peace and consequently a threat to the country's security. The Court indicates that the national judiciary bodies do not mention activities of the association or of its members, which could threaten the territorial integrity or the unity of the nation, nor its activities or statements that could be interpreted as a call for hatred or violence. The Court noted that the national bodies are not powerless in the event that the association, after its registration, undertakes concrete actions contravening the Constitution, the law and public morals. In that case the Regional Court may order its termination. The general assumption that the association would be capable of engaging in such activities does not justify the refusal to register it. The Court deemed that the refusal to register the association was not "necessary in a democratic society" and led to violation of Article 11 of the Convention.

10. Conditions in Places of detention

10.1. Prisons and prisons hostels

On 7 February 2017, the law amending and supplementing the Execution of Penalties and Detention Act (EPDA) came into force. The amendments to the law were made after the ruling of the European Court of Human Rights on the pilot case of *Neshkov and Others v. Bulgaria*. The Court cited as principal problems of Bulgarian prisons overcrowding and poor material conditions and hygiene, and recommended major and large-scale repairs of the material facilities or substitution of some of the places of detention. At the same time, the Court recommended to create a combination of effective means to protect the detainees from the poor material conditions, would have both a preventive and a compensatory character. The amendments to the law introduced the following more important changes:

- The standard for the minimum living area per one detainee (not less than 4 sq. m) was introduced as of the coming of the law into force, not as of 1 January 2019, as per the earlier text of the law.
- A more flexible system for the initial accommodation of detainees. In addition to the criterion of proximity of the prison to the detainee's permanent address, it was accepted for the accommodation to take place depending on the prison's capacity to secure the necessary material conditions.
- Preventive and compensatory means of protection against poor detention conditions were introduced.
- A contestability option for the acts of the bodies for execution of the penalties before the administrative court at the place of execution of the sentence.

That strengthened the independent control on places of detention by the court.

- Direct access of detainees to court with a view to early release was also introduced.
- The conditions for early release also changed: after the amendments to the law, with two-thirds of the sentence served there is no longer a requirement for the rest of the prison sentence to be not more than three years for recidivists, and for the other detainees it was necessary to have served half of their sentence. This, together with the direct access to court, resulted in a considerable increase in the number of prisoners released earlier.

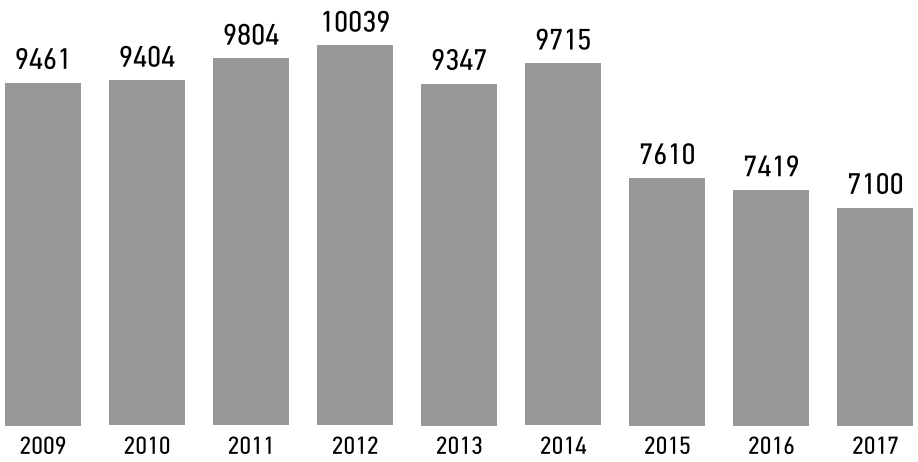
The direct access of detainees to court with a view to early release was perceived negatively by prison managements. Prior to the amendment to the law, the administration determined which detainees it would submit to the court for release. After the amendments, every request by a prisoner must be sent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

In May 2017, two convicted members of the group called "Naglite [Insolent]" asked the court for an early release, which provoked a heated public debate. The Court allowed it, but after a series of media comments the Public Prosecutors' Office appealed the release and the higher instance court revoked the ruling. On that occasion, the *BSP for Bulgaria* parliamentary group demanded an amendment to the Criminal Procedure Code, according to which convicted persons are to be deprived of the possibility to ask the court for early release. However, the socialists were unable to gather the votes needed for imposing the withdrawal of the direct access of detainees to court.

Currently 12 prisons (prison buildings) are functioning in the country, 6 prisons hostels of closed type, 18 prisons hostels of open type and two correctional homes for minors. According to data of the Directorate General on

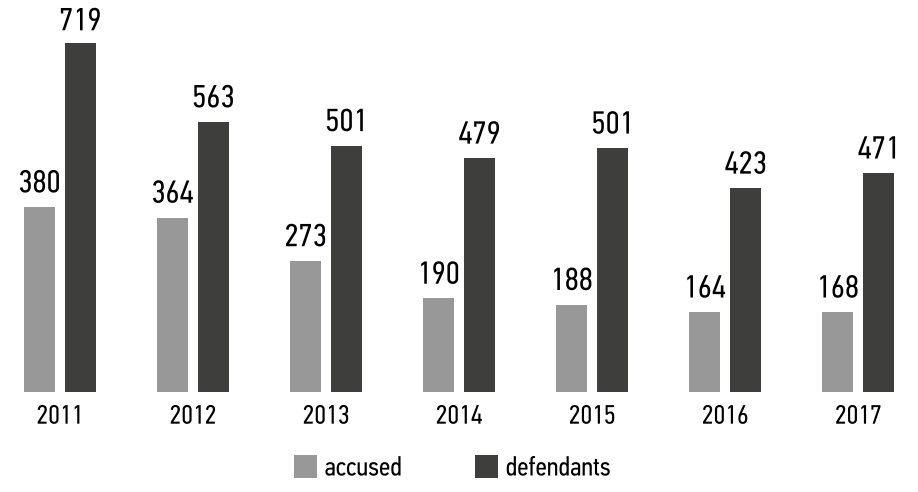
Execution of Sentences (DG ES), the average number of detainees in 2017 was 7,100, among them 210 women. A reduction of that number is observed for the third successive year, which has a good effect on the general material conditions (see Graph 1).

Graph 1. Average number of detainees in the 2009–2017 period. Source: DG ES



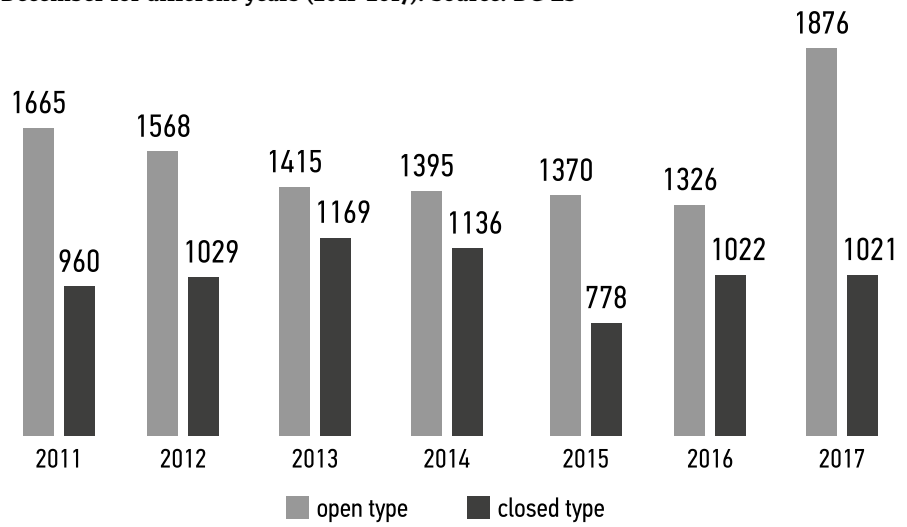
In addition to the convicted persons, persons without effective sentences – accused and defendants – are also accommodated in some groups in the prisons. Their number in the last years also diminished, but in 2017 it did not change substantially compared to 2016 (see Graph 2).

Graph 2. Number of the accused and defendants in the prisons on 31 December in the 2011–2017 period. Source: DG ES



On 31 December 2017, 4,122 detainees served sentences in the prison facilities, 20 minors were placed in correctional homes, and the distribution of detainees in the two types of hostels was as follows (see Graph 3):

Graph 3. Number of convicted persons in the hostels of open and closed type on 31 December for different years (2011–2017). Source: DG ES



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

In the autumn of 2017, the BHC published a study of the most severe punishment in Bulgaria: life imprisonment without parole. According to DG ES

data, on 31 December 2017 a total of 187 persons served life sentences in the prisons, 61 of whom without parole, with the number of that category of persons constantly increasing. The key emphasis in the study was that life imprisonment without parole in Bulgaria is in blatant contradiction with European standards and the ECtHR rulings, and that it must be removed from the Criminal Code.

Although the total number of detainees decreased in the last year, the number of persons engaged in labour activities increased from 2,694 in 2016 to 3,405 on 31 December 2017, 1,538 of whom doing voluntary unpaid work. However, the number of detainees enrolled in school education diminished: on 15 September 2017 it was 1,255 – unlike the previous year when the students numbered 1,431. The possible reason for the fewer students is that the courts tend to impose more and more short sentences: three or six months of imprisonment, which prevents the inclusion of such convicted persons in the educational process and renders meaningless the work on their correction and rehabilitation.

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

Reconstructions and repairs in the prisons continued in compliance with the pilot judgement in the case of *Neshkov and Others v. Bulgaria*. In February 2017, the repaired wings of the prisons in the towns of Varna and Sliven were opened. All cells in the two prisons were equipped with sanitary facilities and new window frames and casings. In March 2017, the Debelt hostel of closed type at the prison in the town of Burgas was opened, which started the process of gradual transfer of detainees into the hostel. This eased conditions in the most overcrowded prison in the system and allowed to start major refurbishing of the prison wings, which was not completed by the end of 2017. Although sanitary facilities were already installed in all buildings with prisons cells, the principal buildings of several prisons, notably those in Sofia and Pazardjik, are in extremely poor condition and need to be refurbished.

Financing was secured for the prison in Pazardjik and the necessary repairs started in the beginning of 2018. In 2017 a hostel of open type was opened at the prison in Belene, which was extremely necessary because that was the only prison where no hostels were built. Several of the hostels of open and closed type (Ceramic Factory, Hebros, Cherna Gora and Kremikovtsi) remained outside the plans for repairs and were also in urgent need of refurbishing. Information provided in the Report of Bulgaria to the Committee of Ministers of the Council of Europe on the compliance with the pilot ruling in the case of *Neshkov and Others v. Bulgaria* notes that a total of 11 hostels of open and closed type in the country lack sanitary facilities in every cell and the inmates use shared toilets.[98]

In August 2017 the Ministry of Justice informed that under the Norwegian Financial Mechanism Bulgaria will receive EUR 25 mln. for improvement of the conditions in the prisons. There are also plans to build a pilot prison with a study centre on the territory of the hostel in Kremikovtsi, as well as to create transitional wards for adaptation of the prisoners who are about to be released, which will be at the hostels in Plovdiv, Bobov Dol and Burgas.[99]

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

10.2. Investigation detention facilities

In 2017, 33 investigation detention facilities (IDFs) functioned on the territory of Bulgaria, 27 of which are autonomous and six are on the territory of prisons or prisons hostels. Due to the poor material conditions in most of the functioning IDFs, in 2015 and 2016 the responsible institutions started gradual moving of arrests to separate corridors in the prison buildings. According to data provided by the Directorate General on Execution of Sentences (DG ES), the total number of detained persons in the IDFs was 14,091 in 2017,

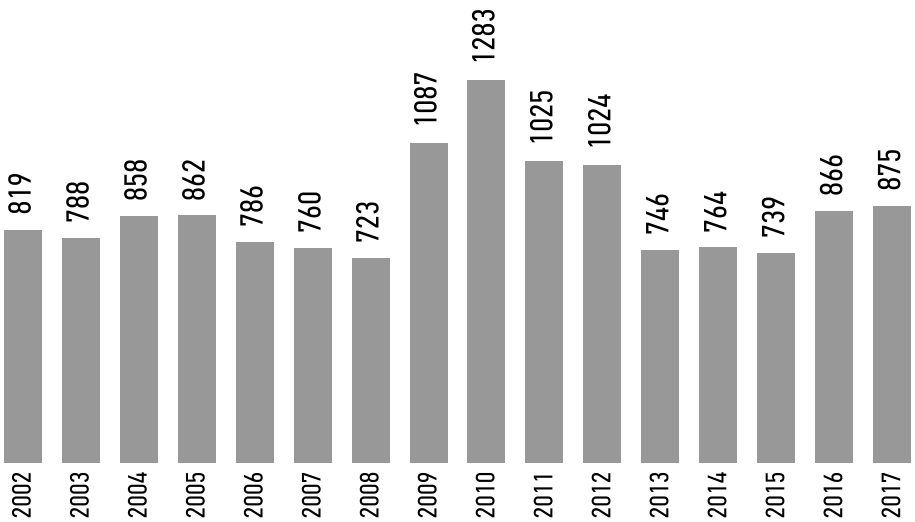
98 Communication from Bulgaria concerning the Kehayov group of cases and the case of Neshkov and Others against Bulgaria (Applications No. 41035/98, 36925/10), Committee of Ministers, Council of Europe, 04/01/2017

99 "Norway allocates more than EUR 25 mln. for Bulgarian prisons during subsequent years," 18 August 2017, accessible at: http://www.justice.government.bg/117/13725/

460 of whom women, 41 minors and 1,471 foreign nationals. The average daily number of persons placed in the IDFs during the year was 1,043, and in December 2017 – 875.

Graph 4 below presents the number of persons detained in the IDFs in December of different years:

Graph 4. Number of persons detained in the arrests in December of different years. Source: DG ES



According to DG ES data, the duration of the detention in the IDFs is as follows:

- up to 72 hours – 1,667 persons;
- up to two months – 11,465;
- two to six months – 1,775 persons;
- longer than six months – 680 persons.

Compared to the previous year, the number of persons detained for more than six months increased considerably: from 440 to 680. The maximum duration of detention in the IDFs may not exceed 18 months.

The total capacity of the IDFs is greater than the average daily number of accommodated persons. Nevertheless, according to DG ES data, overcrowding was found in 2017 in a total of four IDFs in the towns of Russe, Svilengrad,

Vidin and Haskovo. In January 2017, Bulgaria's Report to the Committee of Ministers of the Council of Europe was made public. It refers to the compliance with the pilot judgement on the case of *Neshkov and Others v. Bulgaria*, which is monitored by the Committee of Ministers within the frameworks of the group of judgements on the case of *Kehayov and Others v. Bulgaria*.[100] The report indicates a total of 11 IDFs in which overcrowding was found when calculating the capacity of the IDFs on the basis of 4 sq. m per person. There are also plans for a series of activities in 2017 with a view to improving the conditions in the IDFs:

- transfer of the IDFs to the buildings of the respective prisons in the towns of Sliven and Stara Zagora;
- the IDFs in Dupnitsa and Kyustendil are to be moved to the prison in Bobov Dol and to the hostel in the village of Samoranovo;
- transfer of the IDFs in the towns of Veliko Tarnovo and Gabrovo to a new building on the territory of the hostel in the town of Veliko Tarnovo;
- building a new arrest in the town of Silistra, as well as refurbishing of the IDFs in the towns of Haskovo, Dobrich, Kardzhali and Vidin;
- the IDFs in the towns of Yambol and Sandanski are to be moved accordingly to the arrest at the prison in the town of Sliven and probably to the new building of the arrest in the town of Petrich.

By the end of 2017 none of the activities thus indicated was effected. In addition to the problematic IDFs mentioned above, the conditions in most of the remaining IDFs also give grounds for serious concern. Thus, for example, the biggest arrest in the country – the one in the G. M. Dimitrov Blvd. in Sofia with a capacity of 415 places – 15 sq. m cells accommodate five persons, often for long periods of time, with less than 3 sq. m per inmate in the cell. In addition to the insufficient light and ventilation, a major problem in the arrest is the existence of toilets without doors and partitioning walls in the cells. Their walls are about 1 m high from the floor and do not secure the necessary privacy. In only ten out of a total of 80 cells, intended for the accommodation of women and minors, there is access to toilets with a toilet seat. The remaining toilets in the cells are of the Asian type, which makes their use extremely difficult for persons with disabilities of the lower limbs. Nothing is likewise mentioned in the government's plans about one of the most overcrowded

100 Communication from Bulgaria concerning the Kehayov group of cases and the case of Neshkov and Others against Bulgaria (Applications No. 41035/98, 36925/10), Committee of Ministers, Council of Europe, 04/01/2017.

IDFs in the country: the border arrest in the town of Svilengrad, where the number of inmates is often greater than the number of the beds in the cells. In addition to complaints about the material conditions, repeated complaints were received during the year for harassment and physical violence by prison guards against detained persons in the arrest in the town of Stara Zagora, whereby some of the applicants reported that they had filed suits against the gross violations of their rights during the detention.

With the amendments of February 2017, the ban on torture and inhuman or degrading treatment in Article 3 of EPDA, which was relevant only to convicted persons, became relevant to persons in remand as well. Unlike the conditions in the prisons, most of the cells in the IDFs cannot secure the conditions listed in Paragraph 2 of Article 3 of the law "...sufficient living area, light, ventilation, conditions for exercise, long isolation without a possibility for communication ..." The real situation in the IDFs is as follows:

- one of the IDFs in the town of Gabrovo is still below level 0 (in the basement).
- with the exception of the IDFs positioned in the prisons and several new IDFs, no daylight penetrates into the cells of all the remaining IDFs, because they have no external windows;
- ventilation of the cells is not possible in most of the old IDFs;
- in five of the IDFs there are no exercise grounds outside the cells and the necessary time spent outdoors is not guaranteed, in the ten other IDFs the exercise ground is indoors, using empty premises with removed windows;
- in 18 of the IDFs there are no toilets in the cells, a shared sanitary unit is used and outside the access schedule the detainees need to bang on the door of the cell for someone to open it.

The conditions indicated above are in direct violation of Article 3, Paragraph 2 of EPDA, and after the adoption of the preventive and compensatory means of protection under Articles 276 and 284 of EPDA, the detained persons in most of the IDFs may claim violations of the law before the courts, due to the impossibility of securing the necessary material standard to them. The extremely poor conditions observed by the Committee for the Prevention of Torture of the Council of Europe in the spring of 2014 and the absence of reforms on the part of the Bulgarian authorities gave grounds to the Committee to recommend gradual closing down of all IDFs in Bulgaria.[101] In its attempt to

101 Committee for the Prevention of Torture (2015). Report to the Bulgarian Government on the visit to Bulgaria, conducted from 24 March to 3 April 2014, § 48.

comply with that recommendation the State started to transfer IDFs to the prisons, but during the entire 2017 the government did not provide financing for that process to continue.

11. Protection against Discrimination

In its observations and recommendations, published on 31 May, CERD expressed "deep concern" about the growing incidents of hate speech and hate crimes in Bulgaria, practiced with impunity and targeting the principal minority groups: Turks, Roma citizens, Jews, Africans, refugees and migrants. It also noted "the continuing marginalisation of the Roma" in all spheres of life, and more specifically the coercive evictions from their only homes, the segregation in education and the poor access to employment and medical care. Another sphere of concern for CERD is the treatment of the migrants, and more specifically their coercive expulsion from the country's territory, as well as their ill treatment and their arbitrary detention. The Committee recommends the undertaking of a series of legislative and administrative measures with a view to more effective combating of racial discrimination, as well as strengthening the capacity of the existing mechanisms and bodies. More specifically it recommends strengthening of the independence of the Commission for Protection against Discrimination, the appointing of special prosecutors who would prosecute hate crimes and hate speech, and strengthening the capacity of the Council for Electronic Media for effective sanctioning of hate speech in the electronic media. With respect to the discrimination against the Roma the recommendation is to stop the coercive evictions from their only homes without providing alternative accommodation, legalising of the existing residential areas, to fight against the segregation of Roma education, to improve medical care and to take actions to fight against prejudices and stereotypes connected with them with a view to attaining their better representation in political and public life.[102] By the end of 2017 no actions were

102 CERD, *Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, 31 May 2017, CERD/C/BGR/CO/20-22.

undertaken to comply with any of these recommendations. Quite on the contrary, in some respects, e.g., the coercive evictions of Roma from their only homes, the situation deteriorated one month after the recommendations were published.

In 2017, the case law under the Protection against Discrimination Act (PADA), and other laws regulating equal treatment, noted development in spheres in which progressive case law had been observed for years (e.g., the protection against discrimination of people with disabilities), while at the same time identifying some adverse practices. SAC is a cassation instance for the judgements of the administrative courts, which rule on complaints against CPD decisions. SCC is a cassation instance on cases filed under PADA before the Regional Court.

11.1. Development of the case-law concerning general issues

In one case SAC upheld the ACSC judgement, thus leaving without further consideration the complaint by the Sofia City Municipal Council against a CPD decision disputing a recommendation given on the grounds of Article 47, item 8 of PADA for the Municipal Council to amend an ordinance.[103] SAC accepted that in accordance with the established non-controversial case-law the recommendations under PADA do not constitute an act subject to judicial review. Unlike the mandatory prescriptions that represent coercive administrative measures, the recommendations for amendments to a legislative act do not have a legally binding effect and their fulfilment does not involve state coercion. This judgement upholds the SAC practice in this sense.[104]

The negative case-law of the administrative courts and SAC not to subject to judicial review CPD decisions on signals sent by complainants to the Committee continued to gain momentum. The courts explain that with lack of legal interest, outlined as a prerequisite in the general provisions of the Administrative Procedure Code (APC), totally ignoring the need to enforce the special PADA, moreover to enforce it so as to meet the objectives in the law of effective protection against discrimination. By refusing to take into account the intentions of the legislator who gave *actio popularis* right to persons who are not victims of discrimination, the administrative courts and SAC introduce unlawful restrictions before the functioning of PADA. Thus with a ruling on a

103 SAC. (2017). *Judgement No. 246 of 10 January 2017 on administrative case No. 13840/2016, 5th Panel.*

104 See, e.g., SAC. (2013). *Judgement No. 10497 of 10 July 2013 on administrative case No. 13347/2012, 2nd Coll., 5-member panel.*

case of Roma NGOs against a CPD decision concerning a brochure entitled *Gypsy Crime – Danger to the State* and anti-Roma public statements made by Volen Siderov, SAC, contravening the law, ruled that under Article 50, item 3 of PADA the persons are entitled to refer to CPD cases of discrimination. However, that right is "limited only to reference to the competent administrative body, but does not justify the existence of legal interest for those persons and organisations to challenge the judgements relevant to their signal."[105] Further on in its motives SAC cites the norm under Article 124, Paragraph 2 of APC, instead of applying the special PADA. This ruling is in conflict with the obvious, namely that the CPD was approached by Roma civil organisations complaining of discrimination on the grounds of Roma ethnicity. In the first place, SAC incorrectly cited item 3 of Article 50 of the law. Article 50, item 1 explicitly recognises the right of the "persons concerned" (without restriction for physical or legal entities) to approach the CPD with complaints. This corresponds to the personal scope of the protection against discrimination, as defined in Article 3, Paragraph 2 of PADA: "[a]ssociations of physical persons, as well as *legal entities, shall benefit from the rights under this law*, when they are discriminated on the grounds of the characteristics under Article 4, Paragraph 1, with respect to their composition or the persons engaged in them." It is a matter of common sense to judge that the Roma NGOs are precisely associations of Roma citizens and as such they are "persons concerned" in the sense of Article 50, Paragraph 1 of PADA, and hence they should be entitled to the rights under PADA. On the other hand, the right to appeal CPD decisions is precisely a right under PADA, accessible to all interested persons (Article 68, Paragraph 1 of PADA). The judgements of the CPD, ACSC and SAC on the case of indirect discrimination in a legal norm – Article 92, Paragraph 2 of the Civil Registration Act – are particularly vicious. The proceedings before CPD have been filed for discrimination on the grounds of "ethnic belonging" and it is on the initiative of Roma organisations which, however, have called their initiative document "signal" in keeping with the formal requirement in Article 50, item 3 of PADA. The exact arguments of the organisations, as well as the CPD motives not to ascertain discrimination, are not clear, because the CPD did not provide to the BHC its decision on that file for the purposes of the present report. However, both the ACSC[106] and the SAC[107] deny the right of the organisations to appeal the CPD judgement because they had sent a signal in

105 SAC. (2017). *Ruling No. 1582 of 7 February 2017 on administrative case No. 693/2017, 5th Panel.*

106 ACSC. (2017). *Judgement No. 4020 of 16 June 2017 on administrative case No. 6350/2017, 2nd Panel, 41.*

107 SAC. (2017). *Judgement No. 14203 of 22 November 2017 on administrative case No. 11583/2017, 5th Panel.*

the proceedings before the body on equality. Both in the above example with the racist brochures of the *Ataka* political party and here the administrative courts and SAC ruled contrary to EU law. Under Article 7 of Directive 2000/43/EC the EU Member States make sure that the court and/or administrative procedures are accessible to all persons who consider themselves to be affected because the principle of equal treatment had not been applied vis-à-vis them. The case law of the Court in Luxembourg is also along the same lines: "Article 7 of Directive 2000/43 consequently does not rule out in any way the possibility the Member States to provide in their national legislations the right of the associations having legitimate interest in guaranteeing the compliance with this Directive, or of the body/bodies indicated in its Article 13, *to initiate court or administrative proceedings* with the aim of guaranteeing fulfilment of the obligations ensuing from the indicated Directive, *without acting on behalf of a concrete claimant or in the event of absence of claimant who can be identified*."[108] In another case SAC upheld a judgement of ACSC declaring the inadmissibility of the complaint by Members of Parliament from the MRF political party against a CPD ruling in response to their signal against the former Minister of Health Petar Moskov for his statements stereotyping and penalising all Roma citizens in connection with a beating of a team in emergency medical care.[109] In a ruling marked by profound formalism, CPD found no discrimination in Minister Moskov's statements with which he made public threats to exercise his ministerial power with a view to imposing collective punishment of the Roma neighbourhoods, and the emergency care to stop responding to calls from addresses in them.[110] On this case, citing the judgement of the Constitutional Court on constitutional case No. 11/2006 concerning the rights to defence in court on the part of citizens and legal entities against acts of the executive, SAC even stated "[t]he possibility of introducing *actio popularis* [in cases for protection against discrimination] would be in conflict with the requirement under Article 120, Paragraph 2 of the Constitution" because it is not "in unison with the understanding of legal certainty." However, SAC does not take into account the circumstance that CPD is not part of the executive. Although it is formally an administrative body, it is first and foremost independent, outside the system of the three powers, and secondly – a quasi-judicial body. On the other hand, PADA is a special law dealing with a

108 CEC Judgement of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV.*, C-54/07, ECLI:EU:C:2008:397.

109 SAC. (2017). *Ruling No. 13628 of 9 November 2017 on administrative case No. 12247/2017, 5th Panel.*

110 CPD. (2016). *Judgement No. 503 of 20 December 2016 on case No. 56/2015, 1st Panel.*

particularly important matter: fundamental human rights. Leaning conveniently and with formalism on the Constitution and the practice of the Constitutional Court, SAC failed to explain in that case precisely how the legal certainty would be threatened, if the citizens have the right to *actio popularis* against discriminatory acts and if such cases are subjected to control by all competent courts. Precisely the opposite is expedient with a view to securing fairness and justice, the participation of all persons in public life and the prevention of opposition by groups in society: the Court must have all capacities to remedy wrong decisions by the national body on equality, even when for different reasons, not infrequently determined precisely by the actual discrimination (poverty, low educational status, diminished faith in the institutions and internalised oppression), the affected persons did not undertake actions to defend themselves.

The iniquitous case-law of SAC to refuse to identify the discriminatory character of norms in laws or secondary legislation continued in 2017 as well. Thus SAC rejected[111] the complaint of a prisoner that he could not receive parcels – a possibility available to detainees who are foreign citizens, because the option of receiving food parcels is regulated with a legislative act and consequently "the issue of examining a discriminatory attitude to the claimant should not be discussed at all." The supreme judges accept the judgement of the first instance court that the inspection of the compliance of a piece of secondary legislation with PADA outside the frameworks of proceedings to challenge following the respective APC procedure, but in proceedings under PADA, would constitute an inadmissible and incidental form of judicial review. SAC thus practically rejects the applicability of PADA as a law on its own ground, when other laws contravene it. However, in actual fact, when laws are in conflict, it is the Court's duty to apply either one or the other, and not to wait for the Constitutional Court to proclaim one of the laws as anticonstitutional. PADA is a special law and as such it has precedence over discriminatory norms in general laws that contradict it. Moreover, PADA incorporates norms of EU law that have precedence over the contradicting national laws. The ECJ practice is constant: the national judges are obliged to apply the EU norms, not resorting to the national norms that are in conflict.[112]

111 SAC. (2017). *Judgement No. 6943 of 2 June 2017 in administrative case No. 1980/2017, 3rd Panel.*

112 See the doctrine of the so-called direct effect: when the EU norms are directly applicable, the national court is obliged to ignore the domestic law, if it is in contradiction. See also the doctrine about the so-called indirect effect: when the EU norms are not directly applicable, the national court is obliged to do everything within its power to interpret and apply the domestic law in compliance with them. These institutes are derived from the doctrine on the *primacy of EU law over* national law.

In November the SCC did not allow[113] cassation control of a case concerning the complaint by officials representing an employer with whom they were sentenced to pay jointly to the defendant on the cassation complaint indemnities for material and non-material damage suffered as a result of the discriminatory dismissal of a person with disability. SCC cited its own case law that is mandatory for compliance by the courts, according to which the legal entities act through their representatives and through physical persons included in their structure for implementing their inherent functions or for attaining their goals. Only a physical person can be direct offender, because guilty behaviour can be sought only in such a person. Under Article 74, Paragraph 1 of PADA, the victim may turn for compensation of the damage both to the direct perpetrator (the physical person), and against the person who ordered the work during which or in connection with which the discriminatory behaviour had taken place. The claim may be filed, subject to choice, only against the employer or the persons who perpetrated the discrimination, and simultaneously against all of them, including the employer. The liability of the defendants, with a view to the nature of their obligation, is joint. The compensation damage suffered as a result of inequality in the treatment, constituting discrimination, is not limited to the type and amount specified under Article 225 of the Labour Code. If compensation under this norm is granted to the person with a judgement, that circumstance is to be taken into account in determining the extent of the damage under Article 74 of PADA. When the dismissal has been recognised as being both illegal under the procedure stipulated in the Labour Code, and discriminatory, the special rules of PADA are applied, not of Obligations and Contracts Act (OCA) or of the Labour Code. The norms on tortious liability under OCA are applied in a subsidiary manner, taking into account the special prerequisite for the indemnity proceedings for the discriminated person, regulated in PADA.

In a case against an order issued by the Director of the Municipal Construction Control Directorate of the Sofia City Municipality for removal of an illegal construction site under SpPA, SAC ruled that the objection raised – inter alia – by the appellant in cassation for discrimination on ethnic grounds was unfounded because PADA allegedly provided for different procedural means for protection against discrimination and such protection could not be effected in the proceedings disputing the order.[114] In 2017, the malpractice of

113 SCC. (2017). *Judgement No. 1012 of 1 November 2017 on civil case No. 1422/2017, 4th Panel.*

114 SAC. (2017). *Judgement No. 8669 of 5 July 2017 on administrative case No. 3366/2017, 2nd Panel.*

the administrative courts and SAC to leave without considerations complaints against CPD decisions, filed by persons who had sent the signal in the proceedings before the Committee, was consolidated. Thus SAC upheld an ACSC ruling refusing to examine a complaint against a CPD decision, filed by a person who had sent a signal to the body on equality against SKAT Television for a news report stereotyping the Roma as criminals.[115] That practice runs counter to the aim of PADA and its provisions. In the first place, it discredits the figure of the person sending the signal, intended by the legislator precisely as a means of effective protection against discrimination in cases where the actual victims of the discrimination do not wish or are incapable of undertaking actions for protection against discrimination. Subsequently, Article 68, Paragraph 1 of PADA recognises the right to file complaints to all interested persons. The persons sending the signals should be recognised as interested persons, because it was precisely owing to their signals that CPD ruled in the first place. Recognising that right of theirs would fulfil the aim of achieving effective protection against discrimination (Article 2, item 3 of PADA). The actual case law of SAC recognises the persons sending the signals as interested persons, constituting them as such in proceedings following complaints by the defendants,[116] as well as by ACSC.[117]

There is a positive ruling of the SCC as an appellate instance, concerning the actual *corpus delicti* of harassment under PADA and the allocation of the burden of proof.[118] The Court ruled: "[W]ith respect to the cases of harassment in § 1, item 1 of PADA, it is explicitly indicated that the offender's behaviour either becomes the reason for violating the dignity of the victim, or is aimed at violating the dignity of the victim. Hence [...] for actions claimed to constitute harassment, it shall be necessary to prove that they are capable in principle of causing violation of the victim's dignity according to the respective characteristic protected under Article 4, Paragraph 1 of PADA. [...] [W]ith a view to the provision of Article 9 of PADA, it is sufficient for the claimants to prove behaviour that is objectively capable of causing violation of the dignity of persons possessing the respective protected characteristic, to which they also belong. Subjective negative experience of concrete persons is irrelevant for declaring the claim admissible, because negative emotions are not part of

115 SAC. (2017). *Ruling No. 7023 of 5 June 2017 on administrative case No. 5702/2017, 5th Panel.*

116 See the Protocol on administrative case No. 4855/2011 in the list of SAC, 7th Panel, and the Protocol on administrative case No. 1916/2012 in the list of SAC, 5-member court, 2nd Panel.

117 ACSC. (2015). *Judgement No. 2225/2 April 2015 on administrative case No. 1822/2015, 2nd Panel.*

118 SCC. (2017). *Judgement No. 5442 of 21 July 2017 on civil case No. 15087/2016, II-E appellate panel.*

the actual *corpus delicti* in Article 5 of PADA. The law stems from the idea that discrimination is objectively a phenomenon harmful to society, hence it is forbidden, irrespective of the feelings of the victims. The Court ought to ensue not from subjective, but from objective criteria when assessing whether there is discrimination in a certain case or not. In the event of successful proving by the claimants that there exists defendant's behaviour that is objectively capable of leading to violation of the dignity of persons with respect to some of [the protected characteristics], the latter is hence faced with the obligation to prove that his behaviour does not affect the principle of equal treatment."

11.2. Gender cases

SAC had minimal practice with the "gender" characteristic during the period under review. SAC ruled on a case in which CPD had found[119] that the applicant was the victim of gender discrimination because a male colleague of hers had been promoted several times during the period of time under review, while the applicant had not been.120 The evaluation forms of the male comparator had identical content to those of the applicant, with the exception of activities indicated as additional tasks which, however, CPD found to be part of his job description. The Committee also found that the male comparator had shorter professional experience and lower rank than another female staff member in the same department, different from the applicant, but he was promoted to a position equal to hers. SAC upheld the finding of discrimination.

11.3. Disability cases

In one case SAC rightly revoked an ACSC judgement[121] reproducing the malpractice under PADA not to find discrimination when no concrete affected person had been identified.[122] On the case ACSC revoked a CPD decision stating that the Minister of Health had discriminated on the grounds of disability by failing to secure the necessary material conditions for performing radiosurgery on the territory of the Republic of Bulgaria and for failing to introduce a legal mechanism through which the cost of the respective treatment to be covered out of the budget of the National Health Insurance Fund. SAC positively ruled that for the dispute it is relevant not whether a concrete person

119 CPD. (2015). *Judgement No. 89 of 23 February 2015 on file No. 69/2008, 5-member panel.*

120 SAC. (2017). *Judgement No. 2627 of 2 March 2017 on administrative case No. 12438/2015, 5th Panel.*

121 SAC. (2017). *Judgement No. 438 of 13 January 2017 on administrative case No. 9239/2015, 5th Panel.*

122 See BHC. (2015). *Human Rights in Bulgaria in 2014* Sofia: Bulgarian Helsinki Committee, p. 71.

suffering from an oncological disease bears the protected characteristic of disability, but whether the persons suffering from oncological disease as a group "are bearers of an insufficiency which could impede their full and effective participation in society equitably with the remaining people in their interaction with their environment." Moreover, SAC accepted that the fact that a part of the people with pituitary adenoma do not need radiosurgery treatment is irrelevant to the actual *corpus delicti* of the discrimination on the grounds of "disability."

In another case SAC left without consideration the cassation complaint of a female teacher who was fined BGN 250 (EUR 125) for direct discrimination on the grounds of "disability" for refusing to include a female student in a forthcoming school trip on account of the child's disability.[123] The teacher explained her refusal with her anxiety about the girl's health status. In spite of upholding the rulings of CPD and of ACSC on the case, SAC investigated whether the unequal treatment was objectively justified by attaining a legitimate goal. This does not comply with the law in which direct discrimination is absolutely prohibited. Less favourable treatment based on characteristics protected in the law cannot be justified except the specific hypotheses stipulated exhaustively in Article 7 of PADA. The protection through acquittal that is valid in proceedings for indirect discrimination is not available to defendants in claims of direct discrimination, hence SAC should not have discussed that issue in its judgement.

SAC also pronounced a new important ruling on the less favourable treatment of birth parents of children with permanent disabilities compared to the adoptive parents of such children. In 2012, a three-member panel of SAC pronounced an important judgement upholding a CPD ruling that with the legislation on the grounds of which adoptive parents are paid for their care for the children and that time is also considered to be work for the purposes of pension insurance, but the birth parents off such children are not treated in the same way, found *indirect discrimination against* the latter.[124] CPD simultaneously issued a mandatory prescription and recommendation of the Minister of Labour and Social Policy, both being on the same subject: "to draft and submit to the Council of Ministers for consideration a bill aimed at equalising the options of the biological parents of children with permanent disabilities with those of the remaining members of society and in particular the adoptive

123 SAC. (2017). *Judgement No. 580 of 17 January 2017 on administrative case No. 10383/2015, 5th Panel.*

124 SAC. (2012). *Judgement No. 11111 of 30 August 2012 on administrative case No. 5665/2011, 7th Panel.*

families and the biological parents of children without disabilities," as well as "a bill aimed at equalising the options of the persons providing care to adult members of their families, who are with permanent disabilities, as stipulated in Paragraph 1, item 2 of the Additional Provisions to the Integration of Persons with Disabilities Act (IPDA)."[125] After the ruling of a five-member panel of SAC, revoking the judgement in the part imposing mandatory prescription,[126] the CPD judgement came into effect in its declaratory part and the part with which recommendations are given. On a case on which SAC ruled in 2017, CPD found that as the biological parents of children with disabilities do not receive adequate remuneration for the care that they provide to their children, unlike the remuneration that adoptive parents receive, there is discrimination.[127] The adoptive parents received higher remuneration as "personal assistants" in the National Programme than the biological parents. It was also found that its recommendations in its 2011 ruling have not been fulfilled. With his inaction the Minister had failed to fulfil his obligations under Articles 10 and 11 of PADA, therefore CPD issued a new recommendation for the necessary measures to be undertaken to achieve equality in the possibilities, including through drafting relevant secondary legislation. With that ruling the Committee found no violation of some of the eight forms of discrimination: direct, indirect, harassment, sexual harassment, inciting to discrimination, persecution, racial segregation, and building and maintaining an architectural environment creating difficulties for the access of persons with disabilities to public places, which constitutes failure to fulfil obligations under PADA. CPD ruled that insofar as the norms of Articles 10 and 11 of the law concern special/positive measures aimed at achieving effective equality in practice, it was the responsibility of "the defendant to prove that the differences in the treatment are objectively justified with a view to pursuing a legitimate goal, and that the principle of proportionality had been observed." And bearing that in mind, namely that "there is essential justification of the observed drastic difference in the amounts of monthly benefits for the care of a child with disability by the biological parents compared to professional adoptive families," ACSC upheld that ruling.[128] However, SAC returned the file to CPD for a new ruling, finding that the body responsible for equality had not studied the exact parameters of the difference in the remuneration provided

125 CPD. (2011). *Judgement No. 51 of 17 March 2011 on file No. 170/2010, 5-member panel.*

126 SAC. (2013). *Judgement No. 10497 of 10 July 2013 on administrative case No. 13347/2012, College II, 5-member panel.*

127 CPD. (2015). *Judgement No. 51 of 3 February 2015 on file No. 240/2013, 5-member panel.*

128 ACSC. (2015). *Judgement No. 3718 of 28 May 2015 on administrative case No. 1938/2015, 2nd Panel.*

to the biological parents, compared to the adoptive parents, that difference being one of the most essential prerequisites for assessing the proportionality of the respective legal measure, as well as the absence of analysis of the existing possibilities for the biological parents to receive remuneration by virtue of other effective legal mechanisms.[129]

In another case CPD found lack of special/positive measures to attain effective equality in practice under Articles 10 and Article 11 of PADA by the Minister of Health due to his failure to create secondary legislation through which to create an opportunity to prescribe to terminally ill patients a medicinal product that has not been registered in any country, but is subjected to clinical investigation.[130] The Committee issued a recommendation for the necessary legislation to be drafted. ACSC incorrectly revoked that decision because CPD had not found a comparator – an element of the *corpus delicti* of direct discrimination.[131] SAC ruled that "the identification of a comparator [...] would be of legal importance for verifying direct discrimination," but it is not "an element of the actual *corpus delicti* of the applicable legal norm."[132]

In another case CPD found no discrimination on the grounds of disability for a person who applied three times for a job in three different shopping centres of a big chain selling foods and household commodities, but was not hired.[133] The Committee heard a witness, the applicant's mother, who informed about a conversation between her and the manager of one of the shops, who declared to her that "invalids are not recruited because it is not possible to fire them afterwards." The defendant denied that such a meeting took place, and CPD did not value that evidence. It terminated the file in the part concerning one of the cases of applying for work on account of expired statute of limitation. The ruling on the two other cases was that the applicant had not proven that the defendant accepted the defended characteristic, although he sent his CV in which that information was included. CPD took into account that the CV submitted to the respective body was dated after the job application before the defendant, but failed to demand from the defendant to present that CV in the form in which he had received it. Moreover, it ruled that the CV could not be considered prima facie evidence for accepting the "disability" characteristic by the defendants, because it is not a medical document. CPD thus consolidated

129 SAC. (2017). *Judgement No. 1572 of 7 February 2017 on administrative case No. 12173/2015, 5th Panel.*

130 CPD. (2014). *Judgement No. 350 of 26 September 2014 on file No. 199/2011, 5-member panel.*

131 ACSC. (2015). *Judgement No. 5157 of 20 July 2015 on administrative case No. 10535/2014, 24th Panel.*

132 SAC. (2017). *Judgement No. 1630 of 8 February 2017 on administrative case No. 12978/2015, 5th Panel.*

133 CPD. (2015). *Judgement No. 11 of 13 February 2015 on file No. 212/2014, 5th Panel.*

its unlawful practice to accept as established fact the "disability" characteristic only on the basis of medical documents. The medical model, according to which the disability is determined by a documented diagnosis, corresponds neither to the norms, nor to the objectives of PADA and IPDA. With a view to identifying disability it is sufficient to ascertain that the person has a certain deficiency in practice, which ensues certain special needs, so that this person may be entitled to protection against discrimination. ACSC upheld that ruling.[134] SAC revoked the rulings, but with controversial motives.[135] Thus, on the one hand, the Supreme Court ruled that with a view to ascertaining direct discrimination it would be important to make a comparison with other persons with disabilities, who have also been refused access to employment, which is illegal. However, on the other hand, its motives were that "the applicant should not be compared with persons who are also bearers of the "disability" characteristic, but with persons who – without being bearers of the protected characteristic – are subjected to a more favourable treatment than him." Citing the norm of Article 315, Paragraph 1 of the Labour Code, according to which employers with more than 50 workers are obliged to allocate every year 4 to 10 per cent of their work places as positions suitable for employing persons with disabilities, SAC revoked the CPD ruling and returned the file to the respective body so as to ascertain whether the defendant company is such an employer under the Labour Code, and if it is – whether it had allocated the respective share of vacant work positions for persons with disabilities.

During the period under review, SAC also ruled on a case in which BHC provided legal aid to a person with disability.[136] The claimant is a person held in custody, suffering from emotionally unstable personality disorder, as well as mild mental retardation. Due to his mental disorder the person inflicted self-injuries: he stitched his eyelids and lips, nailed his palms and feet, and attempted suicide. The claimant was deprived of psychiatric care and of subsequent aid: unstitching, bandaging, calming, etc. Instead of receiving care in accordance with his personality disorder, the applicant was punished for the self-harm with disciplinary isolation and was subjected to physical immobilisation with handcuffs. He was also victim of mockery and provocative treatment by the officials, who provoked him with humiliating words to continue and escalate his self-injuries. The claimant complained under PADA and SMRDA that during his prison term in Burgas there was no psychiatrist, in

134 ACSC. (2015). *Judgement No. 4246 of 19 June 2015 on administrative case No. 1221/2015, 22nd Panel.*

135 SAC. (2017). *Judgement No. 1803 of 13 February 2017 on administrative case No. 10984/2015, 5th Panel.*

136 SAC. (2017). *Judgement No. 2629 of 2 March 2017 on administrative case No. 12673/2015, 5th Panel.*

the period after 2006 – there was likewise no physician, only a paramedic, a nurse and a dentist, and for a certain period of time there was no psychologist either. The Administrative Court in Burgas rejected the claim on the grounds that the claimant allegedly did not suffer from a mental illness, but from a psychological problem for the resolving of which he allegedly did not cooperate with the psychologists who worked with him. SAC upheld that ruling, stating that the claimant even received more favourable treatment than the other prisoners, because he had daily access to a medical specialist and psychologist, and his behaviour was aimed at obtaining benefits and a privileged position. BHC helped the victim in filing a complaint before the ECtHR on the grounds of inhuman/degrading treatment by the prison officials through depriving him of the special health care he is entitled to (Article 3 of ECHR, alternative – Article 8), for the negative tendencies of the national administrative courts, based on the symptoms of mental illness of which they explicitly accused him (Article 6 of ECHR), as well as for the circumstance that these violations are related to his disability (Article 14 in connection with Articles 3, 8 and 6 of ECHR).

Special attention is attached to the ECJ judgement on the case of *Milkova v. the Executive Director of the Agency for Privatisation and Post-Privatisation Control* (C-406/15) on a preliminary inquiry by SAC, with which the Court in Luxembourg decided that the scope of the national rules for protection of persons with a concrete disability, who are working on an employment contract, should be broadened so that civil servants with the same disability could also benefit from these rules for protection.[137] The applicant in the case before SAC is a former staff member of the Agency for Privatisation and Post-Privatisation Control, with a mental illness and 50 per cent permanent work incapacity. She was dismissed on the grounds of staff cuts. On that case ACSC adopted the lasting practice of Bulgarian courts on the enforcement of the Civil Servants Act, according to which the absence of general transfer of unregulated cases under it to other legislation predetermined the impossibility to apply the Labour Code, except in separate explicitly regulated cases. Civil servants thus proved to be deprived of the special protection upon dismissal due to vocational rehabilitation of a worker or staff member, of someone suffering from the diseases listed in *Ordinance No. 5 of 20 February 1987 on the diseases for which the workers suffering from them have special protection under Article 333, Paragraph 1 of the Labour Code*. SAC ruled that no preliminary protection

137 ECJ Judgement of 9 March 2017, *Milkova v. Izpalnitelen direktor na Agentsiata za privatizatsia i sledprivatizatsionen control*, C-406/15, ECLI:EU:C:2017:198.

upon terminating the employment relations of a civil servant due to staff cuts is provided explicitly in the law, but there is objective and sound reason not to be applied vis-à-vis persons with the same concrete type of disability, who work with employment contracts, when the sphere of the activities, direct obligations, responsibilities and the requirements for the post do not differ from those that would be presented before another person with the same disability and exercising the same functions and tasks with the same or another employer, but under an employment contract.[138]

However, in another case SAC did not provide protection to some persons with disabilities. Thus a case conducted by the Bulgarian Attorneys for Human Rights Foundation, attacks the norm of Article 7, Paragraph 2 of the *Ordinance on the state requirement on the admission of students in the higher schools of the Republic of Bulgaria*, according to which the candidate-students who have participated successfully in the admission exams and who are with permanent disabilities and 70 per cent or more reduced working capacity, are admitted as students under easier terms and following a procedure stipulated in the regulations on the activities of the higher schools, while for those with 50 per cent or more permanently reduced working capacity 50 this is not so.[139] Contradiction with Article 2, item 1 and § 1, item 2 of IPDA is claimed. SAC does not accept that the disputed provision contradicts IPDA, because IPDA also contained provisions giving privileges only to a part of the persons with permanent disabilities, as well as because the Convention provides reasonable facilitation that is necessary for even easier conditions for the admission of students precisely among the persons with permanent disabilities and 70 per cent or more reduced working capacity, whereby these concrete measures are not considered to be discrimination under Article 5, items 3 and 4 of the Convention on the Rights of Persons with Disabilities.

There is a positive SAC judgement[140] which upholds the ACSC ruling that confirms a CPD decision according to which the Minister of Labour and Social Policy and the Minister of Health effected direct discrimination on the grounds of "disability" by failing to introduce amendments to the necessary norms and regulations, so that the persons with bilateral neurosensory hearing loss would be assisted with targeted aid for covering the costs of replacement and securing of consumables for hearing aids, such aid being available to persons

138 SAC. (2017). *Judgement No. 6014 of 15 May 2017 on administrative case No. 12369/2014, 5th Panel.*

139 SAC. (2017). *Judgement No. 6126 of 16 May 2017 on administrative case No. 5764/2016, 4th Panel.*

140 Supreme Administrative Court. (2017). Judgement No. 7689 of 19 June 2017 on administrative case No. 197/2017, 5th Panel.

with partial deafness, based on lists endorsed by the two ministers on the grounds of Article 35d of IPDA. SAC accepted the ruling of the first instance court that both groups of persons compared were with impaired hearing, the difference being only in the degree of the disability. In that case the persons with more severe disability were placed in an unequal position with respect to the former.

On a claim with legal grounds in PADA in connection with SMRDA, the Administrative Court in Kyustendil found that the Sapareva Banya municipality violated the ban on maintaining an architectural environment that is inaccessible to people with disabilities, due to the impossibility for a person in a wheelchair to enter freely and without help in the building of the Mayor's Office in a village on the territory of the municipality to exercise his/her voting rights at the elections for President and Vice President of the Republic of Bulgaria and national referendum, held on 6 November 2016.[141] It is probable that the ruling will be revoked in the event of cassation proceedings, insofar as PADA does not grant to the administrative courts the power to ascertain discrimination. Judgements concerning damage by government bodies under SMRDA on the part of the administrative courts are regulated in PADA solely in the hypothesis according to which the discrimination had been identified first by CPD. In all remaining cases – irrespective of whether the defendant was a private person or a government body – the regional courts are competent to ascertain discrimination and to order compensation.

On a case filed by a person with locomotor disability, after with a previous ruling of the Sofia Regional Court (SRC), the University of Sofia was sentenced to secure accessible architectural environment in its Theological University, but failed to comply with that ruling, the SCC as appellate instance stated that "it is pointless to ascertain by means of *res judicata* the defendant's persisting inaction" in new proceedings, because "sentencing [the defendant] to put an end to that inaction and to prevent it in the future provides sufficient and effective protection of the claimant for the time to come, because [it] possesses executive power that allows the victim of discriminatory attitude, at any future moment when the inaction persists, to use against the defendant the methods of state coercion [under Article 526 of the Code of Civil Procedure], with a view to satisfying his enforceable right to be treated equally and with dignity."[142]

141 AC – Kyustendil. (2017). *Judgement No. 151 of 5 October 2017 on administrative case No. 372/2016.*

142 SCC. (2017). *Judgement No. 5542 of 25 July 2017 on appellate civil case No. 16178/2016, 2nd Appellate Panel.*

11.4. Cases on the basis of race, nationality, ethnic belonging, citizenship or origin

In 2017 SAC continued to endorse its good practices with respect to the responsibility of the Internet media that do not comply with the ban on hate speech in the comments sections of their websites. Thus on a complaint by a man of Turkish origin about comments in the *Mediapool* website, where, *inter alia*, insults on racial, ethnic and religious grounds, and appeals for ethnic intolerance were published, CPD found that the comments constituted harassment and inciting to discrimination, whereby the media was idle and did not remove them, thus violating Article 8 of PADA.[143] The website administrators could and were obliged to realise that character of the verbal attacks against the applicant and the Turkish ethnic community. The body responsible for equality imposed a penalty payment of BGN 500 to the company and issued a mandatory prescription for it to undertake the necessary measures of contractual, technical and organisational nature in order to prevent violations. The ACSC revoked that ruling.[144] The Court ruled, *inter alia*, that the comments were hardly made by different persons, being stylistically similar; that the applicant's procedural conduct before the CPD led to the conclusion that his aim was not protection against discrimination, but obtaining of the IP addresses of the author of the comments with the aim of future proceedings against that author, hence the CPD ruling against *Mediapool* on a dispute raised with another, covert aim, constituted arbitrary exercising of power; and the procedural comments on the website were "objectifying blatant disregard for the dignity of the people around him, incapacity for civilised behaviour, awareness of the inadmissibility of his own acts, ability to exercise self-control, and accordingly – inability to behave in a way that society expects of its individual members," but "they did not constitute in themselves a manifestation of discrimination, even when they interpret topics connected with the characteristics protected under PADA. Conversely, both in the general case and in the present one, such comments objectify an intensive negativism towards the author's environment, based on his personality problems, not on discrimination." SAC revoked that unlawful ruling as incorrect.[145] The Court motivated its act with the argument that the number of users who are authors of the comments is not relevant to the subject of the dispute. SAC also emphasised that the comments remained accessible for a period of about a month, which meant that the media was "passive observer"

143 CPD. (2013). *Judgement No. 250 of 21 October 2013 on case No. 201/2011, 5-member panel.*

144 ACSC. (2015). *Judgement No. 4550 of 29 June 2015 on administrative case No. 10948/2013, 29th Panel.*

145 SAC. (2017). *Judgement No. 2171 of 21 February 2017 on administrative case No. 12401/2015, 5th Panel.*

who did not impose effective control. It revoked the ACSC ruling in the part on the ascertaining of the violation and the imposition of penalty payment. It upheld the judgement of the first instance court in the part revoking the imposition by CPD of mandatory prescription to the manager of the media "to undertake the necessary measures of contractual, technical and organisational nature so as to prevent violations of [PADA]", but guided by different motives: the measure imposed is not among the exhaustively listed measures in PADA. That was not the first positive SAC ruling on such a case,[146] with similar good practice existing for ACSC as well.[147]

The Regional Court in Burgas ruled on the case of two journalists of Roma origin against statements by Valeri Simeonov, the leader of the ultranationalist party National Front for the Salvation of Bulgaria, made in 2014 and 2015 in his capacity of Member of Parliament from the rostrum of the National Assembly.[148] In his statements Simeonov stereotyped Roma citizens with the words "savage thieves and bullies, drunk to a blackout after receiving the monthly child and social benefits," "insolent, cocky and brutal humanoids, demanding the right to receive wages without working, demanding sickness benefits without being ill, child benefits for children who play with the pigs in the street, and maternity benefits for women with instincts of stray bitches?..." and "insolent, cocky and savage humanoids, ready to kill so as to steal a few levs," etc. The Court found harassment under PADA, because the statements "lead to violation of the dignity of the person and create a hostile, degrading, humiliating and insulting environment, and everyone with Roma ethnic belonging can be affected by them, whereby it is not necessary for the statement to refer to the entire Roma community so as to be perceived as violating the dignity of an individual representative of that community, who identifies himself/herself as such." Simeonov was sentenced to put an end to the violation, as well as to refrain in the future from further violations. The claimants in the case did not demand compensation.

The SRC failed to apply correctly the institute of comparator in direct discrimination, rejecting the application for ascertaining discrimination on the grounds of "ethnic belonging" of a prisoner of Turkish origin, to whom

146 See SAC. (2016). *Judgement No. 13542 of 12 December 2016 on administrative case No. 10756/2015, 5th Panel.*

147 See ACSC. (2015). *Judgement No. 5378 of 30 July 2015 on administrative case No. 4433/2015, 2nd Div., 26th Panel.*

148 Regional Court – Burgas. (2017). *Judgement No. 1151 of 31 July 2017 on civil case No. 7094/2016, 3rd Civil Panel.*

the prison administration forbade to communicate with other prisoners of Turkish origin in Turkish.[149] The Court hearing that case compared the claimant not with the prisoners of Bulgarian origin, who communicated fluently in their mother tongue, but with those of the detainees who served precisely the same sentence as him – life imprisonment – irrespective of their native language. In view of the fact that the claimant cited the characteristic of "ethnic belonging", that ruling of the Regional Court evokes dismay. The Court did not discuss at all whether the persons who are not with Turkish ethnic belonging were subjected to the same restrictions. What is more, the Court illegally ruled, although it cited the norm of direct discrimination that the comparator had to be in an "identical situation" and not in a "comparably similar situation." In this way, the comparison according to the type of punishment served is not relevant to the dispute brought before the court, and even if it had been, it ought to have studied whether the persons serving precisely the same sentence, but who did not bear the protected characteristic, were treated in the same way.

11.5. Cases on the basis of sexual orientation

In 2017 CPD ruled on several files concerning discrimination based on sexual orientation. In proceedings against the owner of the platform for sharing video clips *Vbox7.com*, concerning not the content of the video clip, but the subtitles to it, the Committee presented an act in whose factual part it explicitly indicates that the complaint of the applicants is directed against the speech in the subtitles, but neither cited that speech, nor discussed it in its motives.[150] The video clip to which the subtitles containing the contested speech are attached is an experiment with hidden camera, documenting the reactions of casual passers-by in public places to the public manifestation of intimacy between two men holding hands. The ruling not only does not make clear the nature of the trial speech, but – conversely – the Committee stated that "the video material does not contain discriminatory elements." The judgement has come into force.

On another file CPD stated that "the applicant failed to present indisputable evidence in support of his claims that the defendant [...] used about him the expressions "Are you a fag? You are offering sex services to men" – after

149 SRC. (2017). *Judgement No. 178361 of 22 July 2017 on civil case No. 75958/2015, 36th Panel.*
150 CPD. (2017). *Judgement No. 265 of 19 July 2017 on file No. 66/2016, 5th Panel.*

a witness was heard in connection with the file, who had been identified as eye witness of "words and qualifications by [the defendant] addressed to the applicant, connected with his sexual orientation."[151] The judgement contains no concrete information on the exact nature of the defendant's comments about the applicant's sexual orientation, or even about their nature. CPD has not studied that issue and does not discuss it in the motives of the judgement. In order to state with respect to that file that there was no *corpus delicti* of violation of the ban on harassment under PADA, CPD limited itself to whether the defendant's alleged statement was exactly as reproduced by the applicant in his complaint. The Committee has not investigated if the defendant's statement does not correspond to the content of the complaint, then what its content is precisely. Its content was found to be "connected with the sexual orientation" of the applicant, but it had failed to study precisely what the statements were and whether they were against the law, as the applicant perceived them.

In another case CPD terminated the proceedings and left without consideration a signal against the leader of the informal Neo-Nazi National Resistance organisation, because the signal concerned his interview before the website *Lentata.com*, but there was no address where to send the subpoena to the defendant, and it could not be found on the website where the interview is published.[152] On that dossier the Committee has not exhausted all options to find the address for the subpoena to the defendant. CPD has powers by law and practice to require from the MoI bodies and from the population register kept by the Directorate General on Civil Registration and Administrative Services, data on the current address of citizens for the purposes of the summoning. The judgement has come into force.

In December CPD ruled on a complaint by a German citizen in connection with the refusal by the Minister of Justice of the Republic of Bulgaria to give her consent for total adoption of a child.[153] The applicant believes that the Minister's motive was based on the fact of her cohabitation with a woman with whom she has concluded registered partnership, which constitutes discrimination based on her sexual orientation. CPD stated that there had been no discrimination, because the Minister's refusal is not based on the circumstance that the applicant cohabits with a person of the same gender, but that the information about the cohabitation with another person had not been

151 CPD (2017). *Judgement No. 286 of 27 July 2017 on file No. 247/2016, 5th Panel.*

152 CPD (2017). *Judgement No. 320 of 18 September 2017 on file No. 184/2015, 55th Panel.*

153 CPD (2017). *Judgement No. 433 of 15 December 2017 on file No. 183/2016, 5th Panel.*

presented by the Germans to the Bulgarian authorities before starting the adoption procedure, which constitutes essential violation of the procedure (Article 117, Paragraph 2, item 2 of the Family Code). The Committee has found that the applicant's sexual orientation had not been discussed by the Adoptions Council, the only issue discussed being the violation of the procedure: failure to submit full and true information on the candidate for adoptive mother. CPD correctly took into account the need to find a comparator – one of the elements of the *corpus delicti* of direct discrimination – and on finding that the case is a precedent in the practice of the Ministry of Justice, it studied the issue whether other persons cohabiting with a same sex partner have received the consent of the Minister of Justice to adopt a child from Bulgaria. The Ministry provided to CPD case-law on two such cases.[154] The judgement is subject to judicial review.

In May SAC ruled on the cassation complaint by the Mayor of the Pazardjik Municipality against the ruling of the Administrative Court in Pazardjik, which revoked the Mayor's refusal to issue the birth certificate to the child of a couple women, conceived using an *in vitro* procedure in Denmark and born in 2016. The two women are written as the child's parents in the child's birth certificate issued by the Danish authorities, but the identity of the donor is not given, which is secret. Due to the bad climate in Denmark, the couple decided to raise the child in the home town of one of the mothers – Pazardjik. However, the municipality of Pazardjik refused to issue a Bulgarian birth certificate to their son, because – *inter alia* – the birth certificate and the certificate of baptism issued by the Danish authorities indicate as origin of the child the names of two women, whereas in the specimens for birth certificates, which are endorsed in Bulgaria and are in compliance with the Bulgarian legislation, the child's origin is from a mother and father. Following the complaint by the biological mother, the Administrative Court in Pazardjik returned the file to the Municipal Office for a new decision, with instructions to leave blank the field for "father" in the child's Bulgarian birth certificate and to cross it, according to the norm of Article 12, Paragraph 3 *of Ordinance No. РД02209/21 May 2012 on the functioning of the Unified System of Civil Registration*.[155] Upholding the judgement of the first instance court, SAC also ruled that according to

154 SCC (2015). *Judgement No. 3807 of 2 June 2015 on civil case No. 6253/2015, Civil Panel, 1st Marriage Panel*; and SCC. (2016). *Judgement No. 8453 of 18 November 2016 on civil case No. 13548/2016, Civil Panel, 4th Marriage Panel.*

155 Administrative Court – Pazardjik. (2016). *Judgement No. 553 of 19 October 2016 on administrative case No. 623/2016, 3rd Panel.*

Bulgarian legislation it is inadmissible to register two female parents, because same sex marriages in the Republic of Bulgaria are currently inadmissible.[156]

In April SRC ruled on the case of human rights activist Radoslav Stoyanov against the notorious Bulgarian journalist and television presenter Martin Bogdanov – Karbovski, recognising as an established fact that the journalist was guilty of discrimination in the form of persecution under PADA.[157] According to the court ruling, the persecution was perpetrated by Karbovski with his statements about the claimant in one of the broadcasts of his Karbovski's Show on TV7 on 12 January 2014 in connection with actions undertaken by the human rights activist for protection against discrimination against the journalist. The show in question discussed a signal sent by Stoyanov against Karbovski for sexist speech of the latter, with Karbovski claiming in his show that this act limited his freedom of expression and that he actually did not perpetrate any discrimination. The journalist commented in his show the personality of the human rights activist together with his guests. The SRC motivated in its judgement that "[s]everal times Martin Bogdanov repeated that the claimant wrote anonymous tips, suggesting that he was a sneaky informer, linking the activities he was engaged in with fascism and defining it as "subversive" [...] The defendant also used the term "Pavlik-Morozov-style zeal" [after the name of a young boy who was praised in communist Soviet literature for having denounced his parents to the KGB – editor's note] for the activities of [the human rights activist] and other persons, that term being associated in the eyes of society with unnatural treachery, denounced from the point of view of ordinary people. With a view to this, the Court accepted that by using the cited words he managed to suggest to the spectators that the activities of [the claimant] for protection against discrimination limit the freedom of the citizens and this is done with the sole aim of harming them, which objectively discredits his image and his name." With respect to the several statements by Karbovski in the show that the human rights activist is an open gay, the SRC ruled: "The very circumstance that someone announces facts in connection with the sexual orientation of another person, when that person does not hide that fact and it is known, [...] cannot be considered as defamatory to the good name and image of that person. However, the way in which the information was presented in the show in question by the defendant and its suggestion for the spectators are exaggerated and objectively lead to discrediting of Radoslav Stoyanov [...] The emphasis on the claimant's [homosexual] orientation on the

156 SAC (2017). *Judgement No. 6592 of 26 May 2017 on administrative case No. 12897/2016, 3rd Panel.*

157 SRC (2017). *Judgement No. 103926 of 27 April 2017 on civil case No. 24475/2016, 1st Civil Division, 51st Panel.*

part of the defendant is also excessive, connecting him [in the show] also with fascism (through the use of the term "gays-fascists"), and the context of all comments creates a negative impression from it." With respect to the freedom of expression the Court ruled: "The defendant's opinion, presented in the reply to the application that his liability should not be involved, is unfounded insofar as Radoslav Stoyanov is discussed as a public figure – human rights activist, because even assuming that the claimant is a public personality and should consequently have greater tolerance to public and journalistic interest in himself, this does not substantiate the conclusion that there does not exist a limit to the freedom of speech with respect to his personality or that if the freedom of speech violates the principle of not harming others, then the offender should not be liable for his actions." The judgement was appealed before the SCC.

In May and August, the Sofia Appellate Prosecutor's Office (SAPO) and the Supreme Cassation Prosecutor's Office (SCPO) upheld the refusals by the lower prosecutor's offices to file pre-trial proceedings for instructions published in the Facebook profile of Miroslav Paskalev – Zorets on how to attack participants in the 2016 Sofia Pride after the end of the event and how to beat them up. On the case refusals to file pre-trial proceedings were announced in 2016 by the Sofia Regional Prosecutor's Office and the Sofia City Prosecutor's Office.[158] In its ruling SAPO expressed its complete solidarity with the conclusion of the lower prosecutor's offices that the instructions published in the profile of Mr Zorets are addressed to persons who already have formed discriminatory and hostile attitude to people with non-heterosexual orientation, and for the *corpus delicti* under Article 320, Paragraph 1 of the Criminal Code it is necessary for those persons not to have formed such attitudes. The SCPO stated that it cannot allow the filing of pre-trial proceedings, because the applicant has failed to indicate witnesses or documents in support of his claims, although it admits as ascertained within the frameworks of the preliminary inspection that "materials had indeed been posted in Paskalev's personal profile." On that case the BHC will provide legal aid to the applicant for filing a case before the ECtHR.

11.6. Cases on the Grounds of age

SAC ruled yet again that the dismissal upon acquiring the right to pension under Article 68, Paragraphs 1 and 2 of the Social Insurance Code (SIC) is

158 BHC (2017). *Human Rights in Bulgaria in 2016* Sofia: Bulgarian Helsinki Committee, pp. 162-163.

not discrimination based on age, because the provision contained another element in addition to age as well: the attaining of a certain occupational record, and also because the norm is applied equally to all. Thus SAC ruled on a complaint filed by a Chief Assistant Lecturer at the Plovdiv subsidiary of the Technical University in Sofia that she was not treated less favourably compared to other staff members of the University, *who also met the retirement conditions*.[159] The successive failure of SAC in a number of its acts to apply correctly the institute of comparison under PADA, as regards the norm under Article 68 of SIC, evokes dismay. The correct comparator would be a person who *does not bear the protected characteristic* of the applicant – in this case those who have not reached the required age under the law. This highlights that precisely age, in addition with the length of service, constitute the reason for the less favourable treatment. It is not necessary for age to be the only reason for the unequal treatment in order to claim direct discrimination.

11.7. Cases on the grounds of religion or faith

In one case CPD found that there had been no discrimination on the part of the Director of a high school, the Regional Directorate of Education in Sliven and the Minister of Education with their refusal to allow absence from school after *sunset on Fridays* during the winter season to a female student professing Adventism.[160] CPD found that the representatives of that religious denomination are characterised by the fact that its members celebrate Saturday *from sunset on Friday* until sunset on Saturday with religious worship that requires the termination of any form of social activities as a principal and irrevocable religious obligation, and that failure to observe it is considered to be a sin and hence inadmissible for the members of that group. The applicant makes a comparison between herself and persons professing Islam, but a comparison can also be made with persons professing Christianity in view of the fact that without support in the Constitution the main Christian holidays are always proclaimed as non-working days, even without a request to that effect by the leaders of the religious denomination in the person of the Holy Synod. Acting with the help of her mother as guardian, the applicant asked to be exempted from classes during that time by the Director of her high school, who refused. After an identical request to the Regional Directorate of Education, the latter addressed a question to the Minister, who also refused. Contrary to what has

159 SAC (2017). *Judgement No. 6337 of 22 May 2017 on administrative case No. 1509/2016, 5th Panel.*
160 CPD (2017). *Judgement No. 117 of 28 March 2017 on file No. 115/2016, 3rd Panel.*

been established by itself concerning the religious practices of the religious denomination, the body responsible for equality found no discrimination due to the circumstance that the leadership of the religious denomination had not submitted a proposal following a procedure stipulated in the law, addressed to the Minister of Education and asking him to issue a specific order to that effect. This is gross formalism, unfortunately upheld by a first instance court.[161] With these decisions the body responsible for equality and the Court linked the ascertaining of discrimination with whether the victim had asked some authority to issue a special administrative act that recognises that she is entitled to a right based on a protected characteristic. This is unreasonable and non-compliant with the law. Insofar as the Director is familiarised with reliable information on the nature of the religious customs and rites, and insofar as the considerations of proportionality in the norm on indirect discrimination have been complied with, where the balance is least with the child's right to education, the Director should be able, even without a specific administrative act from the Minister, to evaluate and abide by the norms of PADA, when the opposite would lead to indirect discrimination. It is not necessary for the legally bound persons – physical or legal entities – to receive explicit permissions from the authorities so as to abide by the law. As regards the Minister's refusal, it is inadmissible for him to cite that he had actually not been approached with a request in compliance with the legal norm, which is restrictive and which gives an opportunity only to the leaderships of religious denominations and only at a specified moment of the calendar year to file such a request and it to be recognised as legitimate. This is not an effective approach for prevention of discrimination, nor legitimate protection. This is not the *corpus delicti* of the offence "indirect discrimination."

161 Administrative court – Sliven (2017). *Judgement No. 145 of 28 September 2017 on administrative case No. 150/2017.*

12. Right to Asylum and International Protection

12.1. Refugee procedure

12.1.1. Access to the territory

In 2017 the Turkish border authorities imposed draconian measures for controlling movement out of Turkey at their borders, including at the border with Bulgaria, with the aim of preventing the fleeing of their own citizens. Addidional influence on the border control measures from the Turkish side came also from the EU-Turkey agreement signed in March 2016 for return to Turkey of migrants who had arrived illegally on the Greek Aegean islands. According to the agreement, for every illegal migrant who has been returned to Turkey, the EU would accept one Syrian refugee located in Turkey. This led to measures on the part of Turkey under the policy of permanent preventing of the Syrian refugees to leave the country and to enter Bulgaria or Greece, so as to be preserved and used as bargaining chip under the agreement with the EU. These two factors resulted in a sharp decrease in the number of foreigners who entered Bulgaria in 2017.

According to the annual statistics of MoI, a total of 2,985 foreigners have been counted in the country, which represents 93% reduction compared to 2016, when 18,659 foreigners were estimated. During the past year, 743 persons were found entering the country, 441 persons leaving, with 1,801 persons in the interior of the country. In other words, if the persons caught entering or leaving the country decreased accordingly by 84% (2016 – 4,598 entering) and by 82% (2016 – 4,956 leaving), the share of the foreigners found and caught on the territory of the country increased by 46% (2016 – 827 in the interior of the country). At the same time, the State Agency for Refugees registered

3,700 foreigners as persons seeking international protection. This constitutes a decrease by 80% compared to 2016 when 19,418 foreigners seeking protection were registered.

Nevertheless, the difference between the total number of foreigners, established by MoI (2,985 persons) and the number of foreigners who had filed a request for protection (3,700 persons) in 2017, as well as the sharp decrease in the number of persons detained at the border (-82% to -84%) against the background of the sharp increase (+46%) of those detained in the interior of the country, parallel with other discrepancies in the announced official migration statistics show that either the statistics are incorrect in order to hide the actual volume of the migration flows through Bulgaria, or that the border control is reduced at the expense of the efficiency of the channels for trafficking in human beings, and hence unknown. However, it is obvious that a considerable number of foreigners enter, pass through and leave the country, remaining unnoticed in a considerable part: deliberately or not. This conclusion is also confirmed by the statement of the Minister of Defence, who admitted in public in 2017[162] that the migrants continued to surmount the expensive border fence with the help of ordinary ladders, and that the continuing trafficking in human beings is due to the corruption that had made holes in a part of the border defence system.

Although in 2017 not one signal for repulsion (push-back) was registered, indirect information from other public sources, including the press and the media, indicates that the practice of repulsion along the borders of Bulgaria continued on a mass scale and in big proportions. Thus, for example, the Turkish infantry units, the so-called "Border Eagles," declared at the end of 2017[163] that they impeded a total of 20,014 people to enter in Bulgaria and Greece through the land borders, including through readmission in practice from the territory of these countries. Against this background, in 2017 the Bulgarian MoI stopped publishing the data on the number of persons not admitted to Bulgarian territory.

12.1.2. Access to procedure and quality of the procedure

The delay of the access to procedure for the persons who had applied for asylum from the administrative centres for detention of foreigners – the Special Homes for Accommodation of Foreigners (SHTAF) – deteriorated in 2017. If in the previous year the average detention period for persons seeking

162 "Karakachanov admitted that migrants cross the fence with Turkey using ladders," *Dnevnik*, 20 October 2017.

163 "Just for 2017, a total of 20,014 fugitives were stopped, caught and returned only at the border furrow with Bulgaria and Greece," *Vesti.bg*, 11 December 2017.

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

Translation, interpreting and communication in a comprehensible and preferred language during the proceedings for providing international protection and status were not secured for all persons seeking protection. For the persons speaking languages from and into which Bulgaria lacks identified translators and interpreters, the proceedings were conducted in a language chosen by the respective interviewer or decision-making body of the State Agency for Refugees (SAR), and not by the refugee. Moreover, that was applied without data on whether the refugee had given his/her consent for the procedure to be conducted in the respective language or evidence that he/she indeed knows that language. With the exception of the persons seeking protection from Syria and the ones without citizenship, the ratings were minimal and varied on the average from 7% to 0.5%. The applications for protection submitted by persons from states of origin like Algeria, Bangladesh, Pakistan, Sri Lanca, Turkey and Ukraine were treated in practice as clearly unfounded, with zero recognition rating and providing protection.[164] The same approach was also applied to persons from Afghanistan seeking protection, to whom refugee status and protection were provided by way of exception (1.5%) and in the majority of the cases – on the grounds of court judgements revoking SAR's refusals to grant status. With respect to a certain number of persons from the indicated nationalities, their refugee proceedings were conducted in the administrative centres for detention of foreigners residing illegally in violation of the national law (Article 456 of the Law on Asylum and Refugees – LAR). The abandoning by the refugees of their procedures initiated in Bulgaria

164 SAR, Annual Statistics for 2017, accessible at: http://www.aref.government.bg/index.php/en/statistics-and-reports.

continued to be at extremely high levels, whereby in 2017 a total of 77%[165] of the opened procedures were stopped or terminated, compared to 88% in 2016, 83% in 2015 and 46% in 2014.

12.1.3. Legal aid

At the end of 2017, the National Legal Aid Bureau (NLAB) received financing for a pilot project to provide legal aid and representation to persons seeking protection at the administrative phase of the refugee procedure. However, according to the parameters of the pilot project, legal aid at the procedure phase conducted before SAR will be provided only to persons from vulnerable groups. At the end of the year SAR and NLAB signed general rules for providing legal aid at the administrative phase of the refugee procedure, among which rules for selection, for filing complaints against the quality of the aid provided and anti-corruption mechanism. The rules came into force on 31 December 2017, and the providing of the legal aid to vulnerable persons is expected to start in February-March 2018.

12.2. Admission conditions

With the exception of the hostel in the Vrazhdebna district at the Registration and Admissions Centre (RAC) in Sofia, the security of the people seeking protection, accommodated at the RACs of SAR in the capital and in the country was not fully guaranteed, above all with respect to the persons accommodated in the hostel in the Voenna Rampa area. The persons seeking protection in that RAC sent signals that outsiders had almost unimpeded access to the bedrooms at night. Verbal and physical aggression, as well as direct assaults and robbery of persons seeking protection from that hostel were an almost regular phenomenon in the vicinity of the centre. As a rule, these incidents were not investigated by the police, and the perpetrators remained unidentified and unpunished. The lack of reaction on the part of the law enforcement and human rights bodies forced a number of NGOs to address an open letter to the Social Home for Temporary Accommodation of Refugees of MoI, which appeals for effective investigation, punishment and prevention measures to be undertaken under the prescriptions of the law.[166]

165 Information from SAR: 30.6% or 6,251 stopped proceedings; 46.7% or 9,551 terminated proceedings; 23% or 4,624 substantive judgements.

166 Letter from Caritas Sofia, BHC, the Council of Women Refugees, Nadya Centre, CVS Bulgaria and Lumos Foundation, 22 December 2017.

In 2017, too, no standard operational procedures were adopted for identifying and work with persons from vulnerable groups, including unaccompanied minors. Vulnerable persons continue to receive specialised support and assistance basically from NGOs and providers of services financed from sources outside the budget. In July 2017, the State Agency for Child Protection, with the assistance of interested bodies and organisations, developed an algorithm for identification of and care for the accompanied children-foreigners on the territory of Bulgaria. Although the algorithm was approved in principle by the National Council for Child Protection (NCCP),[167] the government to this moment has not adopted a decision for approval of the developed mechanism and for that reason even the protection of unaccompanied children is not yet secured or guaranteed in practice.

12.3. Detention of asylum-seekers

At the end of 2016, the refugee legislation was amended[168] and restriction of the freedom of movement was introduced for the persons seeking protection during the proceedings before SAR. According to the amendments to the law, the persons seeking protection have the right to move freely only within the frameworks of the zones for movement assigned to them. The permitted zones for movement should be noted in individual registration cards. Repeated violation of the assigned zones for movement was introduced as grounds for accommodation in refugee centres of closed type.[169] In September 2017, the government adopted a decision[170] with which it officially defined the zones for movement of the persons accommodated in the registration-admission centres of SAR, and restriction on entering the border zones was also introduced for all persons seeking protection.

In 2017, the only functioning premise of closed type (PCT) of the State Agency for Refugees was the so-called "3rd block" in SHTAF Sofia (Busmantsi area), with capacity of 60 places. The PCT was assigned to SAR by the Migration Directorate on 19 September 2016. In the beginning of 2017, the refugee administration announced its plans to transform the Transit Centre in the village of Pastrogor into a centre of closed type by returning the "3rd block" under the jurisdiction of the Migration Directorate of MoI, but by the end

167 SACP, Press Centre, 36th session of the NCCP, 11 July 2017.

168 *State Gazette* No. 96 of 6 December 2016, Article 29(1) item 1 LAR.

169 Article 95a LAR.

170 Decision of the Council of Ministers No. 550 of 27 September 2017.

of the year neither of the two was achieved in practice. Currently persons seeking protection are detained in PCT of SAR to establish their identity, or on the grounds of risk for the national security or of public order. On disputing the decision, the national court ruled[171] and indicated the standard for proving the grounds for detention in PCT, as well as that the burden of proof is on the administrative body. The regular inspection of the grounds for detention, provided for in the law,[172] was conducted formally in 2017, whereby the persons seeking protection were taken out of the PCT or freed only after the end of their refugee proceedings, or on the grounds of judgement.

The most negative development in 2017 was the broadening of the practice to conduct refugee procedures in conditions of immigration detention in SHTAF of the Migration Directorate of MoI. Under the law, SAR has the right to detain the persons seeking protection during the proceedings under certain conditions. However, that detention could be done only in refugee centres of closed type of SAR, but not in the common immigration centres of MoI for illegally residing foreigners. Illegal conducting of refugee proceedings in SHTAF of MoI was applied in a discriminatory manner with respect to persons seeking protection from certain nationalities and states of origin: Afghanistan, Sri Lanca, Bangladesh, Pakistan and Turkey. That illegal practice was entirely supported by the national regional administrative courts, which accepted that although the conducting of refugee proceedings in SHTAF constitutes violation of the rules for administrative proceedings, that violation is insignificant insofar as there is no serious restriction of the rights of the detainees seeking protection. Insofar as all proceedings in SHTAF were conducted under the accelerated procedure, whereby cassation appeal is not admitted, there is still no case law of the Supreme Administrative Court on this issue.

12.4. Integration of recognised refugees

The Ordinance for Integration of Refugees and Persons with Humanitarian Status, which was adopted in 2016 after a discussion that continued for two years, never worked in practice, but it was revoked on 31 March 2017 by the caretaker government on the last day of its term in office. The revoking was motivated with the fulfilment of the election promise given by the newly-elected President Rumen Radev – in contradiction to the Constitution and to the principle of separation of powers proclaimed in it. The new Ordinance

171 Administrative Court in Sofia-town, Judgement No.7173 of 29 November 2017.

172 Article 45д (2) LAR.

on Integration adopted on 19 July 2017 did not differ substantially from the rules of the revoked ordinance. In spite of the adoption of the new Ordinance on Integration, the government did not approve concrete rules and budget for encouraging the municipalities to undertake integration plans and measures. In this way, the situation of zero integration of the refugees in Bulgaria continues already for the fourth year in succession.

13. Rights of People with Mental Disabilities in Institutions

At the end of November 2017, the UN Committee against Torture (CAT) examined the sixth periodic report of Bulgaria, which the country owed under the Convention against Torture, ratified in 1986. The procedure of the examination, which was public, involved the participation of a big delegation of representatives of different Bulgarian institutions. CAT also met with representatives of the Bulgarian Helsinki Committee, which presented its report. On 30 November, CAT adopted its final observations and recommendations, which were published several days later. The Committee addressed in them a number of serious criticisms of Bulgaria on almost all issued covered by the Convention. With respect to the institutions for persons with mental disorders, according to the Committee, physical and chemical immobilisation is practiced by prescribing high doses of medicines. The Committee was shocked by the absence of any progress in the investigations of 238 deaths in the homes for children with intellectual disabilities, which were found as a result of the joint inspection by the Public Prosecutors' Office and BHC in 2010-2011. It required of the Bulgarian government to renew these investigations and to report to the Committee about the result until 6 December 2018. In its observations and recommendations CAT expressed particular concern about the deteriorated independent human rights monitoring of the health care, social and educational institutions in which people are placed coercively. These are psychiatric hospitals, special schools for children with antisocial behaviour and social homes for persons with mental disorders. During the last five years, the responsible ministries systematically refused access of NGOs to these institutions.[173]

173 The final observations and recommendations of the UN Committee against
aspx?symbolno=CAT%2fC%2fBGR%2fCO%2f6&Lang=en.

Bulgaria was visited by the Committee for the Prevention of Torture of the Council of Europe in the period between 25 September and 6 October 2017. The aim of the observation was to inspect the measures taken by the government after the last visit and public statement of 2015 on the situation in the places of detention, as well as in the social homes for people with mental and psychiatric problems. The visited sites included the homes for people with mental disorders in Tvarditsa and Radovets, the homes for people with mental retardation in Tvarditsa, Batoshevo, Kachulka and the psychiatric hospitals in Sevlievo and Radnevo. The observation focused on the treatment, the conditions and the means for legal protection of the people placed there. The report of the Committee is expected to be published in 2018.

The long-awaited Action Plan for the 2018-2021 period on the implementation of the national strategy for long-term care was published in November 2017 for public discussion, and was adopted in January 2018.[174] It identified as its most serious focus *"the urgent securing of good quality living conditions to the persons with mental disorders and developmental disabilities, who are placed at this moment in specialised institutions with not good conditions and not good quality of care."* In a broader perspective it attempts to address with measures having a real effect "the insufficient diversity of support services in the community and the insufficient providing of home services," as well *as "the capacity and the functioning of the actual system for long-term care, including the interaction of its health care and social components."* The principal objectives of the plan until 2021 are:

1. Improvement of the quality of life and of the opportunities for social inclusion of the people with disabilities and the elderly by securing a network of services and support measures in the community and at home;

2. Prevention of the institutionalisation of people with disabilities and elderly people, and building an accepting and supportive attitude in society;

3. Restricting the network of specialised institutions and the access to them, taking people with disabilities out of the specialised institutions and closing down 10 specialised institutions for persons with disabilities with the least acceptable living conditions;

4. Creating a regulatory framework for developing social services and integrated health care and social services.[175]

174 Action Plan for the 2018-2021 period on the implementation of the national strategy for long-term care, http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=3108.

175 Action Plan for the 2018-2021 period on the implementation of the national strategy for long-term

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

- prevalence of institutional services over community support;
- the services in the community do not comprise life support activities of integrated healthcare and social character and mobile support in domestic environment;
- almost total absence of services for people with different forms of dementia;
- the network of services is the smallest for three groups of users: persons with mental disorders, persons with dementia and old people;
- in spite of the not very small financing for the providing of social services, including with EU financing, the capacity of the services provided is insufficient for satisfying the constantly growing needs.[176]

With respect to the persons with mental disorders the Plan found that the patients with schizophrenic diseases, kept under observation, are 25,849 and that between 10% and 15% of that group (2,500 –3,000 persons) need support in the community; 1,000 of them are placed in institutions for long-terms care, and about 230 spend long time in the state psychiatric hospitals. On 31 October 2017, 1,028 persons lived in the 13 homes for patients with mental disorders, 906 waited for accommodation in institutions, and the 30 family-type placement centres (FTPC) in the country have 410 places and the 34 safe houses – 321 places.[177] The Agency for Social Assistance (ASA) identifies the persons with mental disorders as a risk target group due to: lack of developed network of social services in the community for them, lack of integrated health care and social services for continued support and rehabilitation for

care, p.13.

176 Action Plan for the 2018-2021 period on the implementation of the national strategy for long-term care, p.7.

177 Reply by Roumyana Petkova, ASA Executive Director of 27 November 2017, to a question by BHC on the Access to Public Information Act (APIA).

the chronically ill; negative public attitudes to people with mental disorders that place them in social isolation; the enormous number of property frauds and abuse of these people. For this reason the plan is accelerated opening of services in the community for psycho-social rehabilitation, which are to comprise both resident services and support in the person's immediate environment. The services should be provided by multidisciplinary teams trained in contemporary methods of psycho-social rehabilitation and should be supported by measures for social inclusion of the people with mental disorders, above all in the sphere of education and employment.

The patients with developmental disabilities under observation are 28,293 according to the plan. Approximately up to 2% in that group are entirely dependent on care (with severe and profound developmental disabilities), i.e., about 400 persons. They also need specialised medical care, which should be provided in good coordination with the specialists from outpatient care. The biggest number of social services in the community were opened for them in the last years, including of resident type. Therefore, the number people wishing to be accommodated in specialised institutions, FTPC and safe houses diminished, though it is still high. On 31 May 2017, the waiting list for accommodation of persons with developmental disabilities numbered 355. On 31 October 2017, there were 2,083 inmates in the 27 homes for people with developmental disabilities, with 223 waiting for accommodation in an institution, there are 324 places in the 26 FTPC for them and 811 places in the 96 safe houses.[178] New social and integrated health care and social services in the community are planned for them, aimed at creating a supportive environment both for them and for their families. The services should secure developing of the potential of the persons with mental disabilities for independent life and possibilities for their social inclusion by building work and social skills and by securing employment conditions.

The patients with dementia who are under observation are 2,408, but in view of the fact that above the age of 60 years the percentage of dementias increased from 1% to 30% in the higher age categories, the needs of services for them will grow. The waiting list for accommodation in institutions and in resident services is quite long: 468 persons on 31 May 2017, and on 31 October 2017 – 369 are waiting for accommodation only in institutions, and 825 were placed in the 14 homes for dementia patients.[179] A pilot model for support and

178 Reply by Roumyana Petkova, ASA Executive Director of 27 November 2017, to a question by BHC on APIA.

179 Reply by Roumyana Petkova, ASA Executive Director of 27 November 2017, to a question by BHC

care in the community for persons with dementia is expected to be launched in the 2018-2021 period. Developing care and support presupposes broadening of the circle of trained specialists: physicians and other medical specialists, psychologists, social workers, etc.

According to the plan, over 180 persons are waiting for accommodation in institutions for adults with physical disabilities and sensory impairment. Most of these institutions do not have an environment adapted to the users, or possibilities for medical, social and professional rehabilitation and adequate health care. The prevention of institutionalisation of persons with physical disabilities requires access to medical and functional diagnostics, kinesitherapy, physical therapy, speech therapy, ergotherapy, psychotherapy, etc., as well as to secure possibilities for treatment, visits and rehabilitation in the patient's home. For the deinstitutionalisation of the persons placed in these institutions there are plans to build resident services in the community, adapted to their needs and securing conditions for rehabilitation, including raising their educational and professional-qualification level, broadening the employment opportunities, labour-therapeutic activities, participation in different public events, etc. For the people with physical disabilities, who can remain in their domestic environment, the plan envisages different forms of day care and care by the hour, providing services to compensate their deficiencies in connection with their educational needs, raising their personality potential, rehabilitation in domestic conditions, creating of social contacts, organising their free time and mastering new skills, engaging in activities aimed at securing labour employment, including protected employment in the form of labour therapy. For the persons with severe physical disabilities, who need prolonged or permanent rehabilitation and health care, integrated health care and social services will be provided.

The plan groups four types of measures for:

1. Securing support in domestic environment and in the community to persons with disabilities and to elderly people dependent on care by means of:

- legislative regulation of the procedure for providing and financing *a personal assistant, social assistant, home assistant* and the possibilities for providing them by all kinds of providers (municipalities and private providers);

on APIA.

- supported employment for persons with mental disorders and developmental disabilities, and development of social enterprises;
- providing hourly mobile integrated health care and social services to persons with disabilities and elderly people who need care in all 28 administrative regions in the country, developing and applying methods for providing patronage care and standards for the quality of the service, training and supervision of the providers of patronage care;
- creating day care centres for support to persons with disabilities and their families, and centres for social rehabilitation and integration for persons with mental disorders and for persons with developmental disabilities (which also offer labour therapy and labour mentoring), updating of the methodologies and training of the staff.

2. Securing high quality social services in the community for persons placed in institutions with poor living conditions/care and gradual closing down of institutions by means of:

- Creating resident centres to care for people with disabilities and old people; staff training; development of a methodology for intensive support for old people incapable of caring for themselves, placed in resident social services in the community; implementation of own programmes of NGOs for support and social inclusion of persons with mental disorders and developmental disabilities in institutions;
- Closing down of institutions for persons with mental disorders and developmental disabilities, which do not cover the minimum requirement for quality of life, as well as support to persons to use other suitable services by means of:
  - Drafting specialised criteria and methodology for evaluating the state of persons with mental disorders and of persons with developmental disabilities;
  - Creating and preparation/training of teams for: individual evaluation of the needs of support; study of the wishes of the persons placed in institutions that are about to be closed; consulting; evaluation of the specific medical needs; evaluation of the need of intensive support by specialised staff; evaluation using the methodology for evaluating a patient's state; evaluation of their social circle and possibilities for re-integration in domestic environment; drafting individual plans for support of the persons placed in institutions that are about to be closed; individual assessments and assessments of the social circle/possibility for re-integration of the persons in domestic environment; individual social work to prepare the persons to be taken out of institutions and the measures for the actual transfer; securing the

inclusion of the persons who are about to be taken out of the institutions, evaluation and drafting of the plans in compliance with Articles 16 and 16a of the Social Assistance Act, follow-up evaluation – not earlier than three months and not later than six months after the transfer to the new service, and accordingly updating of the plan and referral to other, more suitable services in the community in accordance with the new evaluation;

- Drafting of a plan for closing down of the specialised institution;
- Securing supervision of the teams involved in the assessments and the drafting of the plans and of the staff in the specialised institutions until their final closing down.[180]

- Evaluation of the needs of all persons placed in specialised institutions with a view to planning the second stage of the process of deinstitutionalisation of the care for persons with disabilities by means of:
- Creating and preparation/training of teams;
- Conducting individual assessments also of the assessments of the social circle and of the possibility for re-integration of the persons in domestic environment;
- Drafting proposals for suitable services and proposals for the measures for taking persons out of the institutions;
- Securing supervision of the teams involved with the assessments and drafting of the proposals.

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

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

180 The specialised institutions for persons with mental disorders and developmental disabilities with the poorest living conditions, which are to be closed down until 31 December 2021, will be proposed by the Agency for Social Assistance on the basis of preliminary monitoring and evaluation.

- Drafting an Ordinance on integrated health care and social services;
- Regulation of the status of social workers and introduction of mechanisms for development and motivation of the persons working in the social services system;
- Developing standards for social work: on quality, effectiveness and work load (for the social services sector);
- Developing and applying programmes for training, qualification and supervision of the staff of the social services for adults.

4. Building the necessary infrastructure for providing social and integrated health care and social services to persons with disabilities and elderly people dependent on care

Financing under OPRD 2014–2020 will be used to build, repair and equip six day care centres for supporting persons with different forms of dementia and their families, and 68 centres caring for people with disabilities and old people (for persons with mental disorders, persons with developmental disabilities, persons with different forms of dementia and old people unable to take care of themselves) in the 2018–2020 period amounting to BGN 41,373,980 (EUR 20,600,000). Up to BGN 14 million (EUR 7 million) have been planned so as to finance the providing of the new services in these centres with a total number of users 1,260 within one year.

BGN 4 million (EUR 2 million) have been planned for the 2018–2020 period to develop methodological materials/methodologies, teaching packages, etc., trainings and supervision, evaluation of the needs of the persons, communication strategy and measures for raising the capacity of the system.

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

Ten new centres for social rehabilitation and integration will be created for persons with mental disorders and for persons with developmental disabilities, with a capacity of up to 40 places, and their expenses will be covered for one year. BGN 7 million have been planned for the 2018–2020 period for

repairs, refurbishing and equipment of the existing buildings with a view to providing services in the new centres suited to the needs of the target groups, and training of the specialists and supervision.

BGN 3 million have been planned for creating social enterprises in which no less than 150 persons will work: young people with mental disorders and developmental disabilities, living in FTPC; adult persons with mental disorders and developmental disabilities, living in social services in communities of resident type for the 2018-2020 period. The duration of every project should be no less than 12 months.

The anticipated results of the implementation of the plan are:

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

14. Women's Rights

The end of 2017 marked the beginning of one of the most destructive and irrational debates in the human rights sphere, which has ever taken place in Bulgarian society. The pretext was Bulgaria's commitment to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Many of the participants in the debate turned their backs entirely to the subject matter of this international contract, introduced themes that are entirely alien to it and used it for their own political and ideological purposes, openly inciting to discrimination against women, homophobia, transphobia and hatred of the values underpinning Bulgaria's membership in international organisations at European and global levels. The political leaders, who otherwise competed to introduce measures to cope with crime – from home thefts to high level corruption – demonstrated total ignoring of the severe and systematic criminal infringements against the personality of women in Bulgaria. Whether due to ignorance, fear of losing the traditional dominant position of men over women or misogyny, the majority in Bulgaria turned their backs to the protection of human rights and postponed for an indefinite time the introduction of the best standards for prevention and protection from violence against women and domestic violence. Against this background, all the other state strategies, plans, measures, promises and declared intentions for combating violence against women lose their credibility and weight.

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

In 2017 Bulgaria failed to implement any institutional, organisational or legislative measures aimed at combating violence against women. The government proved to lack interest in the issue to such an extent that it even failed to adopt its mandatory programme of measures for prevention and protection against domestic violence. Since 2012, on the grounds of Article 6, Paragraph 5 of the Protection against Domestic Violence Act, such strategic documents have been adopted every year, although their effect has remained unclear for lack of comprehensive vision, mediocrity of most measures envisaged and lack of financial resources. Paradoxically, in the beginning of January 2018 the Council of Ministers adopted a programme for prevention and protection against domestic violence, which was to be effective with respect to the already gone 2017 as well.181

For lack of official statistics and centralised analysis of data connected with domestic and other forms of gender based violence, the real dimensions and specificities of the problem remained hidden. However, a study conducted in 2017 by the European Institute for Gender Equality of the European Union (EIGE) revealed very alarming attitudes and tendencies in Bulgarian society in this respect.182 On the basis of data accumulated by Eurostat and the EU Agency for Fundamental Rights, EIGE produced an index of the violence against women, in which Bulgaria has the poorest performance and ranks 28th. The Index consists of three main indicators: distribution, seriousness and reporting of the cases of violence. Bulgaria occupies the last position in the European Union not only with respect to the general evaluation of the indicators, but also as autonomous scoring on two of the three indicators, namely: seriousness and reporting of the cases of violence. In other words, women in Bulgaria fall victims of the most serious forms of violence, but signal least frequently about that.

181 Council of Ministers (2018). Decision No. 23 of 17 January 2018 on the adoption of a National Programme for Prevention and Protection against Domestic Violence.

182 European Institute for Gender Equality of the European Union (2017). *Gender Equality Index 2017: Measurement Framework of Violence against Women*. Accessible on the Internet in English at: http://eige.europa.eu/rdc/eige-publications/gender-equality-index-2017-measurement-framework-of-violence-against-women.

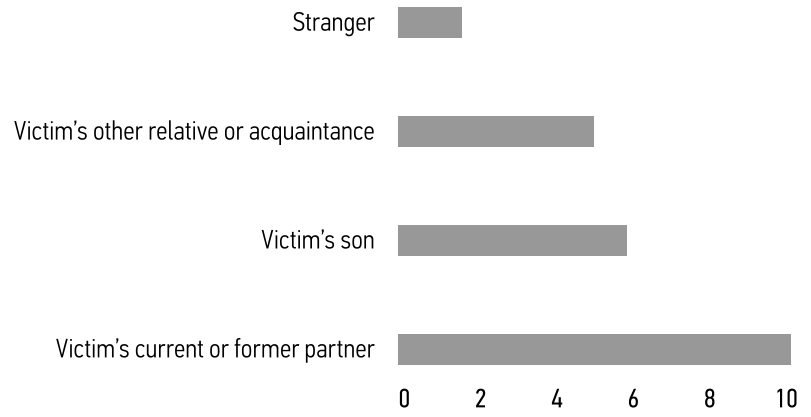
Continuing its 2015 initiative, BHC again made an attempt to supply part of the missing information about the violence against women by outlining the scope and the principal characteristics of the most severe criminal offences against the personality of women: murders. However, they should not be examined isolated from the other forms of discrimination and violence against women, but only as the tip of the pyramid, with the unequal power relations between women and men and the stereotypes connected with the social role of the gender – at the base of the pyramid.

According to the data from the study conducted by BHC on the case law for murders, in 2017 there were 29 sentences in cases of premeditated murders, attempted murders and death caused by negligence as a result of deliberate injury inflicted upon women aged above 14 years.[183] All judicial acts ended with conviction. The defendants in 27 of the cases (93%) were men. The data presented below data were taken from these 27 cases.

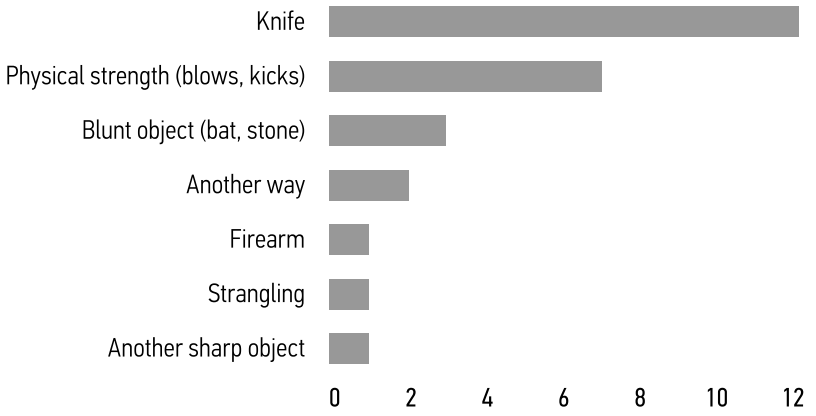
19 of the cases studies are for deliberate murders, 6 – for attempted murders, which remained unfinished due to circumstances not dependent on the perpetrator and 2 – for death caused by negligence as a result of deliberately inflicted injury. In 25 of the cases (93%) the victim and the perpetrator knew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

183 The data presented have been taken from the case law concerning murders of all district courts in Bulgaria for 2017. With the aim of collecting the data, requests for access to information were filed under the Access to Public Information Act to the 27 district courts in the country and to the Sofia City Court, which examine under the law cases of deliberate murders as first instance. The requests were for information on the numbers of the cases for deliberate murders, in which judgements were pronounced in 2017. Until 10 February 2018, such information was received from 25 district courts. After examining the judgements, which are accessible – as a rule – on the Internet, those in which the victims are women were identitied and analysed. The absence of the information from the remaining three courts was compensated by examining the entire case law for 2017 of the district courts in question.

Graph 5. Types of perpetrators of murders/attempted murders of women in 2017, according to their link with the victim



Graph 6. Means/way of the crime



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

14.2. Gender equality

In 2017, Bulgaria continued to lack a clearly defined state policy for encouraging gender equality. The Act on Equality between Women and Men, which came into force in 2016 and which had serious shortcomings, notably its declaratory character and lack of concrete substantive provisions, predictably failed to bring improvement of the situation of women in any sphere of life. One of the few commitments of the government, explicitly formulated in the law – to adopt plans for implementation of the National Strategy for Equality between Women and Men – remained unfulfilled in 2017.

The circumstance that women are more capable than men to take care of the dependent members of the family and for the household remained among the most sustainable and harmful gender-based stereotypes in Bulgarian society. Immediate expression of its action can be seen in the statistics of the National Social Security Institute (NSSI), where a very serious gender inequality is observed with respect to the use of paid leave to care for dependent members of the family. For yet another successive year, the NSSI data indicate that in almost 100% of the cases it was women who remained at home to care for sick members of the family and for the small children, even when under the law leave can be used or transferred to be used to the man. 184

184 National Social Security Institute (2016). Statistics on the indemnities paid in the first quarter of 2017. Accessible on the Internet at: http://www.nssi.bg/images/bg/about/statisticsandanalysis/statistics/obz/SPRAVKA_bolnichni_template_30_09_2017.pdf.

Table 2
Indemnities paid upon the occurrence of some types of causes for work incapacity in the first nine months of 2017 according to gender of the insured persons

	Women	Man
Pregnancy and childbirth	**96%**	**4%**
Care for children up to 2 years of age	**98,7%**	**1,3%**
Care for a sick member of the family	**90,5%**	**9,5%**

A similar situation is also reported in EIGE's Gender Equality Index published in 2017.[185] Bulgaria ranks last in the European Union in gender equality with respect to the "Time" indicator. That indicator measures the time that women and men devote to unpaid domestic work and care for children, sick and elderly people, as well as the time that they devote to themselves through participation in sports, cultural or other events. Thus, for example, the percentage of women involved daily with cooking or other domestic duties in Bulgaria e 72.9, whereas for men it is only 13. At the same time, the share of men who devote to entertainment at least one hour every other day is 60% higher compared to women. This results in lower remunerations (by 15.4%) and pensions (by 35%), as well as higher risk of poverty and social exclusion for women in Bulgaria compared to men.

One of the few positive initiatives of Bulgaria in this sphere is that the Programme for the Presidency of the Council of the European Union notes that efforts will be directed towards adoption of the proposed new Directive on the balance between professional and personal life of parents and care givers.[186] A principal objective of that Directive is to increase the use by men of leave for family reasons and flexible work schemes.[187]

185 European Institute for Gender Equality of the European Union (2017). *Gender Equality Index*. Accessible on the Internet in English at: http://eige.europa.eu/gender-equality-index.

186 Council of Ministers (2017). Programme of the Republic of Bulgaria for the Presidency of the Council of the European Union, p. 32. Accessible on the Internet at: https://eu2018bg.bg/bg/programme.

187 European Commission (2017). Proposal for Directive of the European Parliament and of the Council on the balance between the professional and personal life of parents and persons providing care, and for revoking Directive 2010/18/EU of the Council. Accessible on the Internet at: http://eur-lex.europa.eu/legal-content/BG/TXT/HTML/?uri=CELEX:52017PC0253&from=BG.

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

In 2017, the European Committee of Social Rights admitted for consideration two complaints against Bulgaria, both addressing important problems connected with women's rights.[188] The first complaint was filed on behalf of the University Women of Europe, an international non-governmental organisation.[189] The applicant claims that the standards of the European Social Charter (the Charter), connected with the right to labour, the right to equal remuneration, the right to equal opportunities and equal treatment in exercising the right to labour, without discrimination on the grounds of gender, as well as the total ban of discrimination in exercising the rights under the Charter, have not been fulfilled with respect to women in Bulgaria. In this connection, the University Women of Europe point out that irrespective of the international commitments and the national legislation, the unequal remuneration between the genders is a fact in Bulgaria, whereby women receive lower remunerations. The applicant also claims ineffectiveness of the national bodies authorised to fight against discrimination at work. The complaint also states that in comparison with men, women in the private sector in Bulgaria occupy an unproportionally low number of leading positions, whereby the national legislation does not impose a requirement for balanced representation of men and women in the composition of the managing bodies of the companies.

The second complaint was filed by the European Roma Rights Centre, an international non-governmental organisation, in cooperation with the Bulgarian Helsinki Committee.[190] The applicant adduces in it arguments that violation of the provisions of the Charter, guaranteeing their right to protection of health, the right to social and medical assistance and the right to non-discrimination, is admitted with respect to women of Roma origin in Bulgaria, these violations being manifested in the sphere of the access to sexual and reproductive

188 The European Committee of Social Rights is an expert body on the European Social Charter, an international treaty of the Council of Europe. It exercised control on the compliance between the standards of the European Social Charter and the situation in the states that have ratified it in two ways: through survey of the periodic reports by the states and through examining collective complaints filed by authorised organisations (national trade unions, employers' organisations and certain NGOs). Bulgaria has ratified the European Social Charter and the Protocol concerning the collective complaints to it in 2000.

189 European Committee of Social Rights (2017). Judgement of 4 July 2017 on the admissibility of Complaint No.125/2016. Accessible on the Internet in English at: http://hudoc.esc.coe.int/eng?i=cc-125-2016-dadmiss-en.

190 European Committee of Social Rights, Judgement of 16 October 2017 on the admissibility of Complaint No.151/2017. Accessible on the Internet in English at: http://hudoc.esc.coe.int/eng?i=cc-151-2017-dadmiss-en. The complaint is accessible on the Internet in English at: http://www.errc.org/cms/upload/file/collective-complaint-errc-v-bulgaria-22-may-2017.pdf.

health services. More specifically, it is claimed that Roma women in Bulgaria are victims of segregation in maternity wards, where they are admitted in places with poorer material conditions, subjected to racist insults, and in some cases – of physical violence as well.

In December 2017, the European Court of Human Rights communicated to the Bulgarian government the case of *Kolenichev and Fartunova v. Bulgaria*, which concerns another important aspect of gender equality in Bulgaria.[191] The two applicants in the case are a man and a woman who are living together as a couple and have two children of their own. They complained of violated right to personal and family life, in connection with the existing legislation under which the child's family name may be formed only from the father's family name or patronymic, without a possibility to be formed from the mother's names, irrespective of the will of the parents. The applicant Fartunova also claims that she was victim of discrimination because of the less favourable treatment of unmarried women like her, introduced by law, expressed in the impossibility for the family names of women to pass as family names of their children, whereas for men in an identical situation that option is guaranteed.

The Case-law of the Commission for Protection against Discrimination (CPD) for 2017 on cases of gender discrimination, including in the form of sexual harassment, is strongly restricted. During that year, the CPD ruled on the substance of three complaints of gender discrimination and on one case of sexual harassment, whereby violation of the Protection against Discrimination Act was found in one of the cases.

The case in which the CPD found discrimination concerns a pregnant woman who became victim of discrimination when exercising her right to work.[192] The less favourable treatment of her was objectified in the following actions. After the applicant informed her employer that she was in an advanced stage of *in vitro* procedure, he terminated the contract for additional health insurance, concluded in her name. When at a later stage the applicant informed that she was pregnant, the employer started periodically to require from her information on whether the pregnancy continued being a fact. The employer company guilty of the discrimination was fined BGN 1,250 (EUR 625).

191 ECtHR (2017). *Kolenichev and Fartunova v. Bulgaria*, Complaint No. 39017/2012, communicated on 1 December 2017.

192 Commission for Protection against Discrimination (2017) Judgement No. 254/17 July 2017 pn file No. 239/2016.

On another case completed in 2017, CPD found that the quotas introduced for girls and boys to be admitted in high school did not violate the ban on gender discrimination.[193] With the judgement on that case it was stated that the quota principle in the admission of male and female candidates for secondary schools "can be qualified as a 'necessary measure' in the sphere of education and training with a view to securing balanced participation of women and men under Article 7, Paragraph 1, item 12 [of the Protection against Discrimination Act] and hence does not constitute discrimination."

193 Commission for Protection against Discrimination (2017). Judgement No. 177/30 May 2017 on file No. 285/2016.

15. Rights of Children in Institutions

After the end of the first five-year period (2010 –2015), when the Childhood for All Project ended, the reform of the support for children stalled. In 2017 deinstitutionalisation continued to lose momentum and remained at a standstill, especially for the children with disabilities below the age of 3 years. In 2017, too, the State remained far from the expected 30% reduction by 2020 of the number of the children using formal care. Every year in Bulgaria about 3,800 children continue to be separated from their families, one out of three of them being aged below three years.

15.1. Achievements to this moment

In 2017, the positive tendency of closing down homes for children continued: five homes for children deprived of parental care (HCDPC) and two homes for medical and social care for children (HMSCC) were closed. On 1 October 2017, 36 specialised institutions functioned in the country, with 979 children placed in them: 16 HMSCC with 565 children aged 0 to 7 years and 20 HCDPC with 414 children and young people aged below 18 years placed in them.

On 31 December 2017, 3,325 children and young people used social services in the community of resident type (282 FTPC with occupancy of 3,116 children, 18 crisis centres with 113 children and 17 transient housing facilities with 96 users). By 31 December 2017, the number of children in foster care increased ten times: from 221 in 2010 to 2,320. During the same period there was also a six-fold increase of the number of FTPCs (small group homes): from 48 in 2010 to 282, of which: 145 – for children and young people without disabilities,

129 – for children and young people with disabilities, and 8 – for children and young people who need permanent medical care. However, what does a more careful look behind the figures show?

15.2. The blank space: formal care

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

According to the latest updated data, on 31 December 2016 the total number of the children raised outside their families was 13,877 and the functioning social services were 605, including those of resident type. It is a fact that in the first five-year period of the deinstitutionalisation prevalence of formal care in family environment over formal resident care was achieved. That was preserved in 2017 as well. If in 2010 80% of over 13,158 children raised outside their families were in the resident services, in 2016 the tendency was reversed. The children raised outside their families were 13,278 on 31 June 2016, nearly 58% of them, or 8,705, being in formal family care, and 4,573 – in formal resident care. Nevertheless, the number of children raised outside their biological families remained alarmingly high and almost unchanged for seven years of deinstitutionalisation.

15.3. The entrance to the homes remained open

According to data of ASA and MoH, the new placements in children's institutions for 2017 were 424, of them: 88 children in HCDPC and 336 babies and children in HMSCC. In 2017 the accommodation of children without disabilities below the age of 3 years in HMSCC and resident services was to be discontinued. The plans were to discontinue totally by 2019 also the accommodation of children with disabilities below the age of 3 years in HMSCC. It was also envisaged to take all children out of HMSCCs and to close the HMSCCs down by 2019. These are just three of the main activities in the Updated Plan for Deinstitutionalisation (2016–2020) under the measure aimed at stopping

the accommodation of children below the age of 3 years in resident services and closing down of the homes for medical and social care for children. In 2017 the implementation of these activities was either postponed, or did not take place.

In 2017, too, admissions in HMSCC continued, including healthy children below the age of 3 years. In 2017, the closing down of the existing HMSCC was postponed by one year – for 2020, instead of 2019, as indicated in the Updated Plan (2016-2020). According to data from the Ministry of Health, in 2017 there was not even one opened alternative MoH service for children. MoH is in a procedure to apply for financing under the Regions in Growth Operational Programme (2014-2020), with the aim of further deinstitutionalisation of the care for children aged 0 to 3 years. Building of 28 new centres for specialised health care and social care for children aged 0 to 3 years is planned, of which: 20 new centres for children with disabilities who need permanent medical care and 8 new centres for children with high-risk behaviour and need of special health care, at a total value of BGN 14 mln.

15.4. Every second child is a newborn baby

Seven years after the real start of the deinstitutionalisation in Bulgaria, the entrance to the homes for children aged 0 to 3 years continues to be open. On 31 July 2017, 571 children on resident care, aged 0 to 7 years, were placed in 16 HMSCC. One child out of three in HMSCC was aged below one year. The share of the institutionalised children with disabilities was nearly 1.4 times higher in 2017 compared to 2010, or 56.5% (in 2009 the share was 39%).

According to MoH data, in 2017 336 children on resident care were admitted in HMSCC. A little above 40%, or 137 of the new admissions, were healthy children below the age of 3 years, 75 of them, or more than half, were from maternity wards, and 50 – from biological families. The analysis of the MoH data on the new placements indicates that in 2017, too, the main influx into the HMSCC was from maternity wards. Nearly half of the new admissions were newborn babies from maternity wards: 154 (45.8%). The reasons for the continued institutionalisation of babies point to the biggest weakness of the reform: the deficit of early intervention and prevention of abandonment. Another decisive factor is the existence of disabilities. More than half of all admissions in HMSCC in 2017, too, are babies and children with disabilities: 190 (56.5%). The share of the children with disabilities from the total number

of babies and children admitted from maternity and paediatric wards is even higher: 140 of 223 new admissions, or nearly two-thirds (63%). For this group of children the risk to be sent to an institution continues to be the highest. One out of three children aged 0 to 3 years, placed in HMSCC, comes from a family: 109 children (32.4%), 99 of whom are from biological families and 10 are from adoptive families. The statistics for newly-admitted children from families demonstrate an alarming tendency: the prevalence of the share of healthy children. About two-thirds, or 50 out of 81 children from biological families newly placed in HMSCC, aged 0 to 3 years, are healthy children (62%). This suggests the conclusion that poverty, too, remained among the reasons for accommodation of children in homes.

15.5. After "DIRECTION: Family"

The "DIRECTION: Family" Project was one of the five national projects through which the Action Plan for implementing the *Vision for Deinstitutionalisation of the Children in the Republic of Bulgaria* in the first five-year period of the deinstitutionalisation (2010-2015) is implemented. According to MoH data, family environment was secured within the frameworks of the project "DIRECTION: Family" for 434 children below the age of 3 years, including 149 children with disabilities, and 11 children below the age of 3 years were transferred to other institutions. The closing down of 8 pilot HMSCCs for children aged from 0 to 3 years and their replacement with 45 alternative services managed by the municipalities were planned. In the frameworks of the project, 35 new services in 8 complexes for social and health services were opened.

After the end of the "DIRECTION: Family" Project, however, due to unsecured financing, all new services terminated their activities on 21 December 2015. On 1 January 2018, half of the new social services opened under the "DIRECTION: Family" Project, or a little more than one-third of those initially planned, functioned as delegated state activities. According to data from the Mayors, the refurbished buildings of the former eight pilot HMSCCs are with utilisability between 30 and 100% (30% – Gabrovo, 40% – Pazardjik, 80% – Pernik, 100% – Russe, Plovdiv, Montana and Sofia). In seven of the eight pilot municipalities, 17 of the planned 45 new services in the community functioned as delegated state activities on 1 January 2018: six day care centres for children with disabilities and eight FTPC for children and young people with disabilities. In three municipalities – Montana, Targovishte and Russe – the service Mother and Baby Unit survived. Due to lack of regulated

financial standard, the municipalities are seeking project financing for the remaining five services: Centre for Maternal and Child Health, "Family Consulting Centre, Centre for Early Intervention, Centre for Mental Health and Centre for Foster Care and Adoption. On 1 January 2018, hourly social services were provided in most of the municipalities, with financing under new programmes (OPHRD 2014-2020, Accept Me 2015, or with the support of UNICEF). The secured financing is until 31 November 2018, hence the sustainability of the solution is uncertain.

15.6. The reform of 16 HMSCC – blocked

In 2017, according to the Updated Plan (2016-2020), the government nevertheless made two important steps to continue the reform. A procedure for financing infrastructure for social (in municipalities) and for integrated health and social services for children (with MoH) started under OPRD 2014-2020: 162 social services in municipalities estimated at a total of BGN 44,095,000, and 28 new integrated services at MoH at a total value of BGN 14 mln. As was indicated, this is only a plan for the time being. In 2017, the criteria for another operation for deinstitutionalisation of the children and young people under OPHRD, the so-called Deinstitutionalisation-2, were also approved. The aim is to continue closing down HCDPC and HMSCC. However, the Ministry of Labour and Social Policy declared its intention to continue the deinstitutionalisation piecemeal, proposing the preparation of the children to be done without their actual taking out of the institutions. These are new prerequisites for the delayed deinstitutionalisation of the children below the age of 3 years and for the closing down of HMSCC. In practice, the 16 HMSCC for children aged 0 to 3 years functioning on 1 January 2018 were not yet covered by the reform of the care for the children.

15.7. Infant mortality without investigation

At the end of November 2017, the UN Committee against Torture (CAT) examined the sixth periodic report on Bulgaria. In its conclusions the Committee emphasised that it was shocked by the lack of any progress in the investigations of 238 deaths in the homes for children with intellectual disabilities, discovered as a result of joint inspection by the Public Prosecutors' Office and BHC in 2010-2011: 238 deaths were found for a period of 10 years – between 2000 and 2010. For seven years of investigation until the spring of 2017, not one single indictment had been submitted in the court, due to inaction with

severe consequences or death, and failure to conduct subsequently an effective investigation of the events. The UN Committee against Torture required of the government to renew the investigations after the inaction of the Bulgarian Prosecution and to report the results by 6 December 2018.

In 2017, too, BHC continued to monitor the pre-trial proceedings and documents on the deaths, injuries and severe omissions found in 2010 in the care for the children and young people with disabilities accommodated in the homes, which occurred in the 2000-2010 period. When the present Prosecutor General Sotir Tsatsarov assumed his post in 2012, the Public Prosecutors' Office gradually stopped sending its judgements to the BHC and that was done only for several of them. For this reason BHC does not have an indisputable picture of the exact number of completed proceedings or files. Insofar as the BHC has data, 80 proceedings/files have finally been closed with an SCPO act, affecting at least 160 children and young people. This is nearly 45% of the total number of the victims, the infringements against whom are investigated. Other 22 (below 9% of the total number of cases) have been stopped at the moment. All remaining cases have been terminated by a regional, district or appellate prosecutor's office.

15.8. Another 292 uninvestigated deaths of children after 2010

In 2015 BHC received information from the directors of 29 HMSCC for 292 other dead children, aged 0 to 7 years, for the period from 1 June 2010 until 31 December 2014. After a BHC signal, the SACP President sent a request to the SCPO for an inspection to be conducted. Until 27 January 2017, no feedback was received at the SACP on actions undertaken by the Public Prosecutor's Office. That infant mortality, too, remained without investigation. At the moment no one in Bulgaria performs systematic monitoring of the deaths in the institutions and in the services for children. There are children whose death could not have been prevented, but the systematic documenting and assessments of the infant mortality in the homes and in the services would make it possible to understand better the reasons and to reduce the mortality.

According to MoH data, the information about the mortality in HMSCC outlines the following dynamics: 2010 – the deceased children were 49 out of 2,455 placed under resident care, in 2014 – 55 deceased out of 975, in 2015 – 46 deceased out of 757, in 2016 – 47 deceased out of a total of 609. The data clearly show that although the number of the children institutionalised in

HMSCC decreased, the number of deceased children in these "homes" did not diminish drastically, for this reason, if in 2010 the deceased children constituted 2% of the institutionalised ones, in 2016 that percentage was four times higher – 8% (the increased percentage results from the diminishing total number of children in the homes, not of the growing number of deaths, which is in practice constant, as was pointed out).

15.9. The FTPCisation defect

Although the progress in the deinstitutionalisation of the children resulted largely from the growth in alternative services proposed, unresolved problems also remained. The practice of opening "hollow" services that multiply institutional care is still a serious problem. The alarming data on the quality of care and on the security of the children in some FTPC suggest that in 2017, too, there still existed the risk of metamorphosis of the DEinstitutionalisation into FTPCisation. The institutional stereotypes that cannot be surmounted in an environment of numerous unresolved problems are still a fact. According to expert assessments, the most serious problem consists in the fact that in many FTPCs the number of unspecialised staff predominates. The staff lacks the competence necessary for coping with the complex problems of the accommodated children, as well as the knowledge, skills and personal qualities.

The high number of children in formal care is a transmission of another deficit of the deinstitutionalisation. The prevention of the risks of institutionalisation, family support and early intervention still do not fall within the focus of the reform. The State has not yet developed the National Strategy for Early Development of Children. The introduction of foster care and the opening of services in support of adoption likewise do not meet to a sufficient degree the needs, especially of the children with disabilities and of the children in conflict with the law.

15.10. Fewer adopted children and adoptive parents

In spite of the accepted principle that it is in the best interest of the children to opt for adoption, which is also prevention of institutionalisation, the national adoptions showed a steady decrease. According to data of the Bulgarian Association of Adopted Children and Adoptive Parents, in 2017 adoption rates marked a nearly 40% decline compared to 2010 and if 838 children were adopted

in Bulgaria in 2010, then the steady decline in subsequent years resulted in the circumstance that in 2017 the number of adopted children dropped to 507, irrespective of the fact that 2,421 children (1,310 healthy children and 1,111 children with disabilities) are written in the Adoptions Register.

The number of the adoptive parents in Bulgaria also diminished almost in half for 10 years. By 1 January 2018, a little more than 1,500 candidates were written in the National Register of Prospective Adoptive Parents. For the sake of comparison, in 2008 the candidates were 2,715. Precisely that decline became the motive in 2017 to propose legislative amendments to the Family Code. One of the measures is to close down the 28 regional Councils for Adoption at the Social Assistance Regional Directorate in the regions and to create one National Council that would be the decision maker for the entire country.

15.11. 504 foster families without children placed in them

There are deficits in the achievement of deinstitutionalisation: foster care. Comparative data indicate a 10-fold increase for the last seven years in the number of foster parents: from 221 in 2010 to 2,446 – of them 2,424 professional and 22 voluntary. However, the trends from previous years are preserved: elder children, aged between 14 and 18 years, are not particularly desired. The priority of the new project "Accept Me 2015" comprises not only foster care for children aged 0 to 3 years, but also "specialised foster care" for children with disabilities and children with antisocial behaviour. In practice, however, there is no specialised foster care for these categories of children. Specialised foster care also lacks mass public support: in 2017 36% of the Bulgarians believed that children with disabilities should live in homes and only 35% approved those children to be in foster care. The problem with the unoccupied places in the foster families also remained. According to data of the National Association for Foster Care (NAFC), no children have been placed in 504 foster families. The data indicate that 81% of the children placed in foster families by 31 November 2017 came from biological families, from families of friends or relatives, foster family; 19% of the children came from a specialised institution or centre for accommodation.

15.12. The children with disabilities remained excluded from the families

Severe diagnoses are still a barrier before foster parenthood and before adoption. According to NAFC data, 2,178 children were placed in foster families

by the end of October 2017, only 162 of whom were with disabilities. The data on adoption also demonstrate a lasting exclusion of the children with severe multiple disabilities, with congenital anomalies and with chronic diseases from the family circle. According to NAFC data, 80% of the potential parents studied were seriously concerned by the degree of the child's disability.

In 2017, the tendency for adoption of older children and of children with disabilities abroad was also preserved. By 31 December 2017, 901 children aged from 2 to 17 years waited for a home abroad through the use of the special measures for adoption. However, in the list of the "small emigrants" from Bulgaria the number of those who are with active profiles was only 102, or a little more than 1/10. According to data from the Ministry of Justice, for 675 children no applications have been received in the last 6 months from an accredited organisation for providing an opportunity for seeking adoptive parents.

5.13. Children in conflict with the law

In Bulgaria the children in conflict with the law are outside the system for protection, because they are not recognised as children at risk and some of them are placed in institutions of closed type where they are left in custody. "Antisocial behaviour" such as: running away from school and from home, arrogant attitude, conflict with fellow students or teachers, vagrancy, inability to adapt to institutional life and prostitution lead to the accommodation of children in special schools – socio-educational boarding schools (SEBS) and juvenile detention centres (JDC). Although the UN Committee on the Rights of the Child had repeatedly indicated that the term "antisocial manifestation" should be eliminated, this term nevertheless still exists and children receive punishments instead of protection.

The bill for juvenile justice reform drafted at the end of 2016 revoked the 60-year-old Juvenile Delinquency Act (JDA) of 1958 and in practice resolved the problem dating many years back with the deprivation of liberty of children below the minimum age for criminal liability. The new proposals abolish the term "antisocial behaviour" and direct minors (children below 14 years) and the children in conflict with the law to support measures instead of to SEBS and JDC. The bill also introduces deviation from criminal proceedings and exchange of the prison sentence for most crimes only with correctional measures for minors suspected, accused or defendants for violation of the

penal law. Deprivation of liberty is to be applied only as last resort and for the shortest period possible, so that the children would not be deprived of their right to education and of the chance for re-integration on account of their desocialisation in closed institutions. The proposed closing down of the special boarding schools for children with unlawful behaviour and their replacement with centres for correctional supervision at the Ministry of Justice constitute a step towards attaining that goal.

In 2017, too, the ready new bill on juvenile justice remained locked in a drawer. That postponed yet again the closing down of the institutions for correctional supervision at MES: SEBS and JDC. In 2017 only one boarding school was closed down: SEBS in the village of Dragodanovo "on the insistence of the residents of the village of Dragodanovo." Five special schools functioned after 1 September 2017. According to MES data, the annual budget of the five boarding schools for 2017 was BGN 1,778,879 (EUR 1,400,000). On 30 July 2017, 95 children aged from 12 to 18 years were placed in them, a little more than one-fifth of whom, or 20 children are minors (12-13-year-old), and 6 are 18 years old. The staff at the same moment numbered 101. In the SEBS of the village of Varnentsi, Silistra region, the total number of the students is 8, and the staff is three times more: 23 people. According to the budget prediction of MES for "the expenditures" in the next three years (2018-2020), BGN 2,250,000 need to be made available annually for the five functioning special schools-boarding schools.

The observation of BHC (March-May 2017) in two SEBS and four JDC reconfirmed the conclusion that the present system of special schools at MES creates prerequisites for numerous serious violations of the rights of the children, including the right to education, protection and health care. The accommodation of children with diagnoses and with symptom of mental illness in SEBS and JDC continues. Three cases of illegal accommodation of children with established mental diseases were identified: the case S.M. and the case M.G. in SEBS in the village of Dragodanovo and the case A.S. in JDC in the village of Podem. The study conducted by BHC in 2017 found yet again that the detained children were also exposed to increased risk of violence, which was reproduced. Evidence of violence was found in SEBS in the village of Dragodanovo, JDC in the town of Zavet and JDC in the village of Podem.

According to data of RPD in the town of Sliven, one signal was received in the Sliven Directorate in the period from 1 January 2015 until 9 March 2017 for sexual abuse with a minor boy from the Hristo Botev SEBS in the village

of Dragodanovo at the end of June 2016. Pre-trial proceedings have been filed on the case. The minor perpetrator was taken out of SEBS. Cases of violence on the part of teachers against children were described by three boys placed in SEBS in the village of Dragodanovo. According to witness accounts by the students, teachers from the boarding school beat them up with fists and knee kicks in the chest, beating with a stick, slaps in the face and head blows. Cases of mob law were also noticed among children in the boarding schools. According to evidence by a teacher at the JDC in the village of Podem, a group of the so-called "beaters", who restored order through violence, existed among the girls in the boarding school. A signal about violence against children from the boarding school by the so-called "ringleader girls" was sent to BHC in January 2018 as well. The signal informed: "The child is summoned to the room of the ringleader girls, where they beat it up until it obeys them. The teachers pretend that they have not heard the screams."

The observation conducted by BHC in 2017 also found formal educational process in SEBS and JDC. In all special schools the classes are mixed. In the JDC in the town of Zavet, for example, six young people aged from 16 to 18 years were enrolled in a class in "primary education." Some of the students repeated classes 2-3 times, there were also 17-year-olds in first grade. The prevalent majority of the students read and wrote with difficulty according to the evaluation by the staff. No process of training was found in the JDC in the village of Kereka on the day of the observation.

In 2017, the access of BHC to the children in SEBS and JDC was impeded. The BHC team was not allowed to talk in private with the children placed in JDC and SEBS on account of "internal rules" and a "new access procedure" – as was indicated by the JDC and SEBS managements.

16. Rights of LGBTI People

Lesbians, gay men, bisexual, transgender[194] and intersex[195] people in Bulgaria (LGBTI) are confronted with social and legal challenges and discrimination that are not experienced by heterosexual and cisgender[196] people. No significant progress was noted in 2017 on the issues of the equal rights of these groups, most pressing for whom are the access to education on sexual and reproductive health of their communities, legal recognition of the families of same-sex couples, the absence of facilitated and free administrative procedure for gender change following the model of "one stop shop" service, as well as change of the medical standards and practices concerning diseases and anomalies in the development of the genitalia. The main challenges before progress are the absence of expert and public debate on the listed issues, the failure to recognise them as the object of policies, the lack of available resources and strategic planning on the part of the civil organisations of these communities, the lack of developed and salient community

194 *Transgender* is a general concept describing all people for whom there is a difference between the the sex of the body and the gender identity (the sense of belonging to the male or female gender). Those of them who live with gender dysphoria (intensive sense of depression, anxiety and even hostility for one's own corporeal sex, experienced as inconsistent with one's own gender identity) are referred to as transsexual. The persons who do not have a sense of belonging to the sexual binarity man/woman are called genderqueer.

195 *Intersex* or states between the genders for people and other animals refer to variations in the characteristics of the corporeal sex (chromosomes, gonads, genitalia), who are unable to identify themselves clearly or unambiguously as male or female. The obsolete medical concept for these states is "hermaphoroditism."

196 *Cisgender* is a term referring to people for whom sex and gender coincide (e.g., a person born with female genitalia who who feels and identifies herself as woman).

life, as well as the fact that that the prevalent part of LGBTI people continue to live hiding their identity.

16.1. Equality and non-discrimination

Article 6 of the Constitution of the Republic of Bulgaria proclaims equality before the law based on exhaustively listed characteristics: race, nationality, ethnic belonging, gender, origin, religion, education, convictions, political affiliations, personal and social status, and property status. The sexual orientation and gender identity or gender expression are absent among these gender characteristics.[197]

Same-sex consensual sexual acts were decriminalised in Bulgaria with the adoption of the current Criminal Code in 1968.[198] However, the provisions of the law continue to contain aggravated *corpus delicti* and to divide criminal sexual acts into ordinary (undefined) and acts performed "with a person of the same sex" (Article 155, Paragraph 4; Article 157 of the Criminal Code). Examples of non-discriminatory attitude can be seen in the provisions of Articles 149 and 150 of the Criminal Code on the crime of fornication in its two forms: with a person below the age of 14 years and with a person above the age of 14 years. The genders of the perpetrator and of the victim of the crime are immaterial here: they may be either of different or of the same sex.[199]

The minimum age above which the consent of the person for participation in a sexual act is relevant to the criminal character of that act was made equal in 1986 with an amendment to Article 157, Paragraph 2 of the Criminal Code.[200] Earlier "homosexual acts" were considered to be a crime when performed not only with children below the age of 14 years, but also minors aged between 14 and 18 years in general. The equal treatment was revoked in 1997 when "homosexual acts" with persons below 16 years were proclaimed a crime,[201] whereas for persons of different gender the minimum age above which the consent is relevant remained 14 years.[202] However, that was restored again

197 The last two – according to the formulation of Directive 2012/29/EC of the Europeaня Parliament and of Council.

198 Cf. the Criminal Code of 1951, Article 176: "Sexual intercourse or sexual gratification between persons of the same sex shall be punished with imprisonment for up to 3 years."

199 Supreme Court (1981), *Judgement No. 77 of 18 February 1981 on criminal case No. 26/1981, 1st Criminal Panel.*

200 *State Gazette* (1986), No. 89 of 18 November 1986.

201 *State Gazette* (1997), No. 62 of 05 August 1997.

202 See Article 151 of the Criminal Code.

in 2002 and at the moment the age is the same – 14 years – irrespective of whether the sexual act is between persons of different or of the same gender.[203]

The Criminal Code continues to contain the vicious doctrine, according to which rape is understood only as an act performed by a man against a woman, moreover concretely through coercive penile-vaginal penetration. In some cases it is treated differently compared to other types of sexual coercion. All other types of sexual coercion, including coercive oral or anal penetration, irrespective of whether it is with the penis, with another part of the body or with an object, are qualified as "fornication."[204] Coercive penile-vaginal penetration when the victim is an adult is punished with imprisonment for 2 to 8 years (Article 152, Paragraph 1 of the Criminal Code). The same punishment is also stipulated for coercive penile-anal penetration (sexual intercourse) when both the perpetrator and the victim are male, for which, however, there is unjustifiably a separate *corpus delicti* (Article 157, Paragraph 1 of the Criminal Code) and it is not referred to as "rape." However, the punishment would not be the same if both the perpetrator and the victim are female and the coercive penetration was made not with a penis, but, for example, with another part of the body or with an object. Irrespective of the fact that the general understanding of that would be rape, the legal definition of rape in the Criminal Code treats similar infringements as less severe than penile penetration. The motives for that remained unclear. The theoretical interpretation of rape in Bulgarian criminal law as coercive penile-vaginal penetration and as different from fornication dates back at least to the Criminal Law of 1896 and is not unique to Bulgaria. However, while in many other states that crime has long been perceived as gender-neutral, the doctrine in Bulgaria has remained conservative and hence not recognising the nature of a broad spectrum of sexual offences.

Moreover, the Bulgarian criminal law doctrine does not recognise the possibility the rape to have been committed as a specific form of violence victimising the group to which the victim belongs. It is understood only as an act aimed at attaining sexual gratification. The motive for a certain person to be raped due to some protected characteristic of hers or his remained thus unrecognised as determining a higher public danger of the act, e.g., on account of her or his sexual orientation, gender identity or gender expression (the so-called "correctional rapes"); or as an expression of intolerance or humiliation due to the religious denomination, race, ethnos or foreign origin of the victim.

203 *State Gazette* (2002), No. 92 of 27 September 2002.

204 See, e.g., the Supreme Court of Cassation (2010), *Judgement No. 122 of 25 March 2010 on criminal case No. 772/2009.*

The sexual orientation is a protected characteristic under PADA (Article 4, Paragraph 1). However, the gender identity or gender expression is not included among the characteristics under Article 4 of PADA. According to § 1, item 17 of the additional provisions of the law, the "gender" characteristic includes also cases of "gender reassignment." This text transposes into the national legislation Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006. However, the formulation "gender reassignment" that strictly follows the minimum standards of the Directive leaves a possibility for narrower interpretation recognising protection only of postoperative transsexual people. Thus there is a danger of denying protection both to preoperative transsexual people and transgender persons in general, as well as to persons who do not perceive themselves as belonging to the man-woman sexual binarity (genderqueer). There is no case law available to support or reject that assumption.

As the title suggests, the Law on Equality between Women and Men, adopted in 2016, regulates equality only within the frameworks of sexual binarity and does not recognise the fact of the existence of persons outside it.

In March the European Union Agency for Fundamental Rights (FRA) published a document on the situation of LGBTI refugees in the EU.[205] The document stresses that the current procedures and institutions responsible for providing international protection in the EU Member States in many cases are not fit to respond adequately to the specific situation of the persons with LGBTI identity, persecuted in their states of origin. Omissions are noted in the European legal framework, lack of official statistics concerning the number of requests for international protection based on these characteristics, mass lack of specialised standards for conducting interviews with persons from these communities when they apply for status, stereotyped notions and attitudes to LGBTI people of the interviewers, lack of specialised accommodation with a view to preventing cases of harassment and ill treatment, lack of adequate health services for transgender persons, etc.

205 FRA. (2017). *Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers*. Accessible on the Internet at: http://fra.europa.eu/en/publication/2017/march-monthly-migration-focus-lgbti.

16.2. Personal and family life

Bulgarian legislation still does not recognise in any form the families of same-sex couples. Both the Constitution (Article 46, Paragraph 1) and the Family Code (Article 5) define marriage as voluntary union of a man and a woman. The prevalent majority of the political parties represented in Parliament have no positions on this issue, and they also lack on the whole policies on LGBTI equal rights. The exception in this respect are the ultra-nationalist parties in Parliament, which have clear and consistent policies of opposition to the legitimising of the families of same-sex couples in any form whatsoever, as well as the exercising of different human and civil rights and freedoms LGBTI people.

There is no non-marital form of legal regulation of *de facto* families – the so-called "*de facto* cohabitation", referred to in other jurisdictions as civil partnership, registered partnership, civil cohabitation, etc. There exist a total of more than 50 legal provisions regulating numerous rights, obligations, responsibilities or restrictions for married couples, which are not available to same-sex couples living together de facto in lasting family unions. These comprise visiting rights, parental rights, shared property, certain types of leave, widow's/widower's pension, aid, indemnities in the event of death of one of the partners, protection against domestic violence, tax benefits, etc. Unlike the unmarried heterosexual couples, who are also deprived of these rights, same-sex couples have no option to conclude some form of legally recognised union, which places them in an unequal position.

Marriage concluded under the laws of a foreign state between same-sex persons ought to be recognised by the Republic of Bulgaria (Articles 75, 76 and 77 of the Private International Law Code). There is no legislative obstacle for postoperative transsexual people to marry a person from the opposite sex. In 2017 a Bulgarian female couple who had got married abroad filed a case against the Sofia City Municipality –Lozenets district on the grounds of the Municipality's refusal to reflect their marriage as current marital status in the personal registration card of each of the two women. The motive for the Municipality's refusal was the same gender of the two persons. Under the Bulgarian law only municipal offices keep data on marriages concluded abroad and only they certify that circumstance by issuing the respective document or certificate to citizens and institutions. Thus the consequences of the non-registration are that each of the two women is deprived of inheritance rights, tax benefits, matrimonial shared property, right to child adoption by

the two women jointly, as well as the right of one of the women to adopt a biological child of the other. The two women are represented on the case by attorney Denitsa Lyubenova from the Action Youth LGBT Organisation. The case is currently pending before the SAC.

At the end of 2017, the same couple received a refusal from the Centre for Assisted Reproduction for financing an *in vitro* procedure, because in the application form the one of them who is applying for the procedure has mentioned that she is married and has mentioned the names of her wife. The grounds for the refusal of financing by the Centre are that two women cannot create progeny in a natural way. That argument evokes dismay in view of the circumstance that heterosexual couples seeking financing for the *in vitro* fertilisation procedure do that because they are unable to create progeny in a natural way. The refusal by the Centre, obviously prompted by heterosexist motives, was appealed before the ACSC with the legal aid provided by attorney Denitsa Lyubenova from the *Action* Youth LGBT Organisation, but there has been no judgement by the Court within the frameworks of the reported period.

Under the law, only single persons (women or men), as well as married couples, may adopt. Two persons who have not concluded marriage may not adopt the same child. Thus, in theory, only one of the two partners in a same-sex couple could adopt a child, and although the two persons are formally de facto parents of the child, although they contribute to the child's care and have an emotional link to it, the second parent, who may not be a legitimate parent, has no rights over the child, and, conversely, the child has no rights over him/her, e.g., inheritance rights. The situation is the same if one of the two persons is the biological parent of the child – the other person may not adopt the biological child of his/her partner. The artificial fertilisation procedure *(in vitro)* is accessible both to married couples, and to single women.

The Law on Protection against Domestic Violence regulates the rights of victims of domestic violence, the measures for their protection and the procedure for their enforcement. This law protects the persons who are in a kinship relation, who have had or have family ties, or are in *de facto* marital cohabitation (Article 2, Paragraph 1). Theoretically this provision should offer protection also to same-sex couples in *de facto* cohabitation, but in practice this does not happen, because the case law does not recognise that same-sex couples are in a family relationship. Only the heterosexual relationship is understood to be such a relationship, because the law uses the concept "*de*

facto cohabitation as spouses" – and only persons of different genders can be spouses under the Bulgarian legislation.[206]

16.3. Crimes and hate speech

In the current Criminal Code, preaching or inciting to discrimination, violence or hatred, as well as the use of violence, damage of property and the formation, leading or participation in an organisation, group or crowd with the aim of committing these acts based on the sexual orientation, gender identity or gender expression of the victims are not qualified as crime, as this has been done for these acts when they have been committed based on race, nationality, ethnic belonging, religion or political convictions of the victims (Articles 162 and 163 of the Criminal Code). Hate speech based on sexual orientation may be sanctioned under the administrative or civil law procedure of PADA. The only possible means of protection against such speech under criminal law can be found in the general provision of Article 320, Paragraph 1 of the Criminal Code, for the enforcement of which, however, there is no case law and which is applicable only in the event of blatant inciting to crime before numerous people, moreover concretely through distributing printed works or in some other similar way. The Bulgarian Prosecution repeatedly and successively refused even to launch pre-trial proceedings for public appeals for homophobic violence, and if pre-trial proceedings existed at all for such acts with that legal qualification, no such case ever reached the trial phase in court.

Qualified types of *corpus delicti* for murder and for inflicting injury driven by homophobic and transphobic motives are lacking, with more severe punishments in magnitude or type due to the higher public danger of these acts, as is the situation with acts driven by racist or xenophobic motives (Article 116, Paragraph 1, item 11 and Article 131, Paragraph 1, item 12 of the Criminal Code). There is likewise no case law that accepts the perpetration of acts based on these characteristics as aggravating circumstance. Thus the acts committed with such motives are treated as ordinary crimes. The only ruling to the opposite effect is contained in the motives to the sentence for the murder of Mihail Stoyanov – medical student murdered in the Borissova Gradina park in Sofia on 30 September 2008 by a group of young people who were allegedly organising the "cleaning" of the park from homosexual men.[207] On that case, although the Court found that homophobic motives participated in the formation of the premeditation for violence against Stoyanov, it found no

206 SRC (2014). *Ruling No. 26 of 7 October 2014 on civil case No. 53154/2014, 3rd Civil Division, 83rd Panel.*
207 SCC (2015). *Sentence No. 199 of 22 June 2015 on criminal case No. 3766/2013, 28th Panel.*

grounds to state that the murder was also prompted by the same motives. The SRC ruled that the perpetrator's homophobic motives were not an aggravating circumstance, being an expression of scorn for the individual rights of others, for their physical integrity and for the rule of law in society, which suggests the existence of higher public danger. During the period under review, the appellate instance, the Sofia Appellate Court pronounced a judgement according to which the actions of the defendants were guided by homophobic, and not by hooligan motives, and for that reason he deemed as unfounded the complaint of the private prosecutor on the case that the Court incorrectly acquitted the defendants on account of qualifying the act as having been committed with hooligan motives.[208] This ruling is currently subjected to cassation control, but even if it is upheld, this would be confirmation of the gap in the law.

16.4. Legal recognition of gender

Transgender and intersex persons need a statutory procedure for change of their gender (i.e., the gender indicated in official documents). Bulgarian legislation recognises a person's right to change his/her gender (Law on Bulgarian Identity Documents, Article 9, Paragraph 1; Regulations for Issuing of Bulgarian Identity Documents, Article 20, item 6 and Article 22, Paragraph 6, item 5; as well as § 1, item 17 of the Additional Provisions of PADA). However, a statutory procedure for such a change is lacking. There exists an explicit prohibition in the law for the gender to be changed through administrative procedures *(Civil Registration Act*, Article 76, Paragraph 4). The change may occur subject to a request by the person to the regional court, whereby the court panel forms an ad hoc procedure. The documents necessary to the court, as well as the scope of the judgement, if it is in favour of the person asking to change his gender, are assessed by every panel separately. For this reason there exists controversial case law, which is injurious to the citizens.[209] For the same reason there also exists a controversial practice with regard to the requirement for change of the corporeal sex before the gender change.[210] This

208 SAC. (2016). *Judgement No. 330 of 12 July 2017 on appellate criminal case No. 84/2016, 5th Panel.*

209 See the Resource Centre – Bilitis Foundation (2012). *Sex change of trans- and intersex people in Bulgaria: Study of the legal framework and case law and strategy for their improvement*. Accessible on the Internet at: http://www.bilitis.org/db/images/Gender%20Reassignment%20in%20Bulgaria_BG.pdf; and Добрева, Н. (2015). *Gender change through civil law procedure – case law and tendencies in 2014* Accessible on the Internet at: http://www.bilitis.org/db/images/2014_LGR_Practices_BULGARIAN.pdf.

210 Cf., e.g., Regional Court – Varna (2007), *Judgement No. 1835 of 11 June 2007 on civil case No. 1953/2007* and Regional Court – Varna (2010), *Judgement No. 1126 of 6 April 2010 on civil case No. 10044/2009.*

leads to relatively frequent refusals by the court to allow such a change, which is in conflict with the right to personal life of the persons concerned, usually transgender and intersex people.

In 2017 SCC gave two judgements concerning the recognition of the gender of transsexual persons. On the first of the two cases SCC ruled that transsexual persons *cannot be compelled to undergo surgery* for modification of their body against their will as a prerequisite for a change in the gender written in their birth certificate, because the admissibility of such an intervention, without judgement for gender reassignment, is debatable in view of the norm under Article 128 of the Criminal Code.[211] At the same time, however, SCC ruled that the persons who asked the court to change their gender need to establish before the court their serious and irrevocable decision for a future change in their corporeal sex in accordance with their mental one, *the requirement for this being at least start of hormonal therapy for sex change*. The latter is in conflict with the position of the World Professional Association for Transgender Health (WPATH), which indicates that medical and other barriers before the recognition of the gender of transgender persons may damage their physical or mental health.[212] On the second of the two cases SCC upheld its earlier ruling and ruled that for admission of the gender reassignment in the birth certificate of a person, existence of a state of transsexuality is sufficient in the first place, which is ascertained by means of complex medical expertise (medical criterion), and, second, stating before the court of the person's serious and steadfast decision to change the mental and social gender role performed by him/her.[213]

This situation may change through the introduction of a clear and streamlined procedure for gender change in the person's identity documents, if possible, through administrative channels and based on the "one stop shop" principle. That procedure should necessarily rule out the requirement for the corporeal sex of the claimant to be surgically changed (according to the SCC ruling as well), because this will make the procedure accessible only to transsexual, but not to all transgender people, and also because most transsexual individuals, who are planning surgical change of their corporeal sex, first start the transition with a change in their outer appearance, which creates a discrepancy

211 SCC (2017). *Judgement No. 205 of 5 January 2017 on civil case No. 2180/2016, 3rd Panel.*

212 WPATH (2017). *WPATH Identity Recognition Statement*. Accessible at: https://s3.amazonaws.com/amo_hub_content/Association140/files/wpath-identity-recognition-statement-11_15_17.pdf.

213 SCC (2017) *Judgement No. 16 of 30 May 2017 on civil case No. 2316/2016, Civil Division, 4th Panel.*

between their sex and the gender indicated in the person's identity documents. The procedure should likewise not be conditioned by subjecting the person to hormonal therapy, because that therapy is neither necessary to all transgender persons, nor is it safe. Bearing in mind the economic inequality of the group concerned, caused by the serious financial burden that some transsexual people bear in connection with the change of their corporeal sex through surgical and hormonal interventions, as well as the difficulties that transgender people have in finding jobs on the labour market as a whole, it would be good for this administrative procedure to be financially affordable, and – if possible – also free of charge. The legislation should prescribe explicitly that the newly issued documents of the person should not indicate in any way the gender change undergone.

The Bulgarian legislation lacks a legal definition of gender. Hence it should be possible in theory for the documents on the person's civil status to indicate a third option that is different from male or female gender. It is probable that the practical introduction of such a change would create short-term difficulties for lack of such an option in the software of the civil status authorities. However, the change is necessary to the persons who do not feel as belonging to the man-woman sexual binarity.

There are also no medical standards for the surgical change of sex, and the existing medical standards have not integrated the issues concerning the persons with states between the sexes: the intersex people. This includes guarantees for *non-performing* of early genital cosmetic surgery, irrespective of the consent of a parent or guardian.

16.5. Freedom of assembly and association, and freedom of expression

The LGBTI community in Bulgaria enjoys in principle great freedom of assembly and association, and freedom of expression. Four active NGOs with focus on the LGBTI community existed in 2017, whose activities had public visibility: the Bilitis Resource Centre, GLAS, the *Action* Youth LGBT Organisation and Single Step.

The 10th Sofia Pride was organised on 10 June 2017, in which at least 3,000 people participated.[214] The event received broad support: 17 diplomatic missions, UNICEF – Bulgaria and the UNHCR sent to the organisers letters

214 Sofia Pride. (2017) Facebook publication accessible on the Internet at: https://www.facebook.com/sofiaprideparade/photos/a.334452526620245.77265.324662370932594/1461458650586288/.

expressing support.[215] A counter-demonstration also took place on the day of the Sofia Pride, organised by the National Resistance informal ultranationalist/Neo-Nazi organisation, which was attended by several dozens of people. The organisation had hastened a month prior to the date of the Sofia Pride to send a notification to the Sofia City Municipality that they were organising a "cleaning" in the park where the participants in the Sofia Pride gather traditionally.[216] Before the media the organisers admitted that their intention was not to clean the park, but to organise a demonstration against the Sofia Pride. In the end, the two events took place in parallel and without incident. Martha Georgieva, Municipal Councillor from the Democrats for Strong Bulgaria (DSB) political party, read a declaration in support of the Sofia Pride in front of the Municipal Council building in Sofia and appealed to Mayor Yordanka Fandakova to attend the procession. Her position encountered a sharp reaction not only of the municipal councillors from the nationalist parties, but also from the socialists from BSP and from the right-wing GERB party.

16.6. Institutions, organisations and human rights activists

The interaction of the state and municipal bodies with the LGBTI community and its NGOs and advocates in 2017, too, remained weak and formal, being exhausted predominantly with coordinating the organisation of the Sofia Pride. Not one LGBTI organisation received state or municipal financing, or partnered with such bodies on projects or activities. During that year four legal entities had public activities in Bulgaria as LGBTI organisations: the Bilitis Resource Centre, the Action Youth LGBT Organisation, GLAS and Single Step. The organisations participated in the Organising Committee of Sofia Pride 2017.

The Action Youth LGBT Organisation started regular consultations for people living with HIV and for prevention and testing of the MSM group; published the book The Courage To Be with stories of LGB women; launched the L.E.A.D. project in Sofia, Blagoevgrad, Varna, Burgas, Veliko Tarnovo and Plovdiv, its aim being to create a community of 15 LGBTI activists from the country; started to organise monthly meetings with the community, and open and

215 Sofia Pride. (2017). *Statement in support of the Sofia Pride 2017 by 17 diplomatic missions and the UNICEF and UNHCR representatives for Bulgaria*. Accessible on the Internet at: http://sofiapride.org/?p=2403.

216 *Dnevnik* (2017, 8 June). *Even back in January the nationalists wanted to join the procession of the Sofia Pride*. Accessible on the Internet at: https://www.dnevnik.bg/2985530.

closed meetings and seminars with focus on the parenthood on the part of LGBTI people and the rights connected with that.

The GLAS Foundation launched Work It OUT – a group for cooperation of local and international organisations wishing to make their work places more inclusive and using the benefits of diversity, and it issued a handbook for integration of LGBTI staff members.

The Bilitis and GLAS Foundations started a joint project to improve the services for the victims of homophobic and transphobic crimes. Under another project the GLAS Foundation will present in 2018 data from victims of hate crimes, gathered using the online platform *WeAreTolerant.com*. In partnership with Stonewall UK the three organisations also started a monthly group for mutual assistance for families with young LGBTI people and actively participated in the H=H Campaign, which is aimed at raising awareness about the latest methods in HIV prevention and treatment, and at achieving changes in the procedure for providing medication to HIV-infected patients.

The Single Step Foundation started an online chat for support of young LGBTI people and their families, it became member of the National Network for Children and was elected as finalist of *The Change:* a TV competition for socially responsible initiatives, broadcast by NOVA Television.

16.7. Visibility in the media

In 2017, too, the visibility of the LGBTI community in the media continued to be poor. Sofia Pride remained the main pretext for the presence of these communities in the media. The focus continues to be on the issue of whether the LGBTI people in Bulgaria are at all victims of discrimination, at the expense of interest in the concrete separate problems of the community. A more neutral coverage of Sofia Pride by the mainstream media was observed, although this year, too, the goals of the event[217] were not clearly articulated. Many media continue to try to subject human rights activists to the conditions of debates in which their opponents are representatives of ultranationalist and extreme right-wing formal and informal groups.

Presentation of LGBTI people in films and TV shows, including foreign ones, remained weak and stereotyped. Although the principal media periodically

217 Sofia Pride. *Goals of the Sofia Pride*. Accessible on the Internet at: http://sofiapride.org/za-praida/celi-na-praida/.

planned thematic weeks for films that have received the US Academy Award (Oscar), these weekly programmes totally lack recently photographed and distinguished films that are thematically devoted to the LGBTI problems. At the expense of this, in the days around the Sofia Pride some media showed less popular film productions on LGBTI themes and persons, mainly from the comedy genre and presenting these communities in a stereotyped and derogatory way.

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