

**Bulgarian Helsinki Committee**

**HUMAN RIGHTS  
IN BULGARIA  
IN 2009**

**Annual report**

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## Introduction

In the first half of 2009, Bulgaria was governed by the triple coalition of the Bulgarian Socialist Party (BSP), the Simeon the Second National Movement (SSNM) and the Movement for Rights and Freedoms (MRF). The parliamentary elections on 5 July 2009 brought the end of this coalition. The elections were won by the centre-right Citizens for European Development of Bulgaria (GERB), which formed a minority government supported in parliament by several centre-right parties. These include the extreme nationalist Ataka party, known for its anti-minority, xenophobic and homophobic rhetoric.

In 2009, the situation with regard to human rights was subject to varied developments. Both before and after the parliamentary elections, there were positive changes in some areas, as well as severe violations in others. The vulnerable social groups, including some religious and ethnic minorities, women, individuals with different sexual orientation, some categories of detainees and the poor, were most affected by the violations.

### 1. Free and fair elections

In Bulgaria, the elections for the European Parliament were held on 7 June. The parliamentary elections were held the following month, on July 5, and local elections were held in some regions in November. The elections changed the political power in the country. The triple coalition that governed until July was replaced by the centre-right GERB party, which won both the parliamentary and the local elections. Despite the election results, the outgoing coalition did its best to ensure itself an advantage in the pre-election and the election period, including through legislative changes adopted in its interest and through the use of the state media for its propaganda. Some ethnic minorities and independent candidates were discriminated against in the election process.

The *Election of Members of Parliament Act* was amended in April 2009. The amendments included several new provisions, two of which generated a wide public debate and were reviewed by the Constitutional Court on request by a group of MPs. The first provision created, in addition to the proportional representation, 31 single mandate areas - one in each region, and more than one in two regions. The members of parliament in these single mandate areas were to be elected with a significant difference in the number of votes cast in the different regions. In the largest one, Varna, an MP would represent almost four times more voters than in the smallest one, Vidin. The other provision introduced a new 8% eligibility threshold for the distribution of mandates to coalitions under the proportional system (unlike the parties, for which the threshold remained 4%). The Constitutional Court held that the second provision was unconstitutional, but allowed the first one. Thus, the principle of equality of votes enshrined in the Constitution was compromised.

The central and some area electoral committees were dominated by representatives of the ruling coalition who managed to funnel the coalition's interests, sometimes in violation of the law. For example, the Central Electoral Committee refused to have one of the main political powers, the Blue Coalition, registered for the elections. The refusal was

later overruled by the Supreme Administrative Court and the court's chair stated publicly that he was pressured to uphold the refusal. A significant number of sectoral electoral committees' managements consisted exclusively of representatives of the ruling coalition.

Most TV channels and media tried to provide a balanced coverage of the election campaign. However, the state-owned Bulgarian National Television (BNT) demonstrated partiality to the ruling coalition, more specifically to one of its constituent parties, the Bulgarian Socialist Party (BSP). According to the media monitoring of OSCE's Office for Democratic Institutions and Human Rights (ODIHR), which sent a limited election observation mission, during the election campaign the BNT had devoted 54% of its political and election prime time news coverage to the state officials representing the ruling coalition. There was a notable tendency to cover the activities of BSP cabinet ministers positively. Of the government's coverage, 68% positive and barely 11% negative in tone.<sup>1</sup>

The funding of the election campaign was not transparent for all political parties. Although the law does not establish a ceiling for donations, it doesn't allow to differentiate the regular from the electoral donations to political parties.

The ethnic minorities, for which Bulgarian is not a mother tongue, were discriminated during the election campaign. Contrary to the international standards and best practices, the *Election of Members of Parliament Act* explicitly provides that election campaigns are to be held only in the official Bulgarian language (Article 55, para. 2). Thus, the Bulgarian citizens who do not understand Bulgarian did not manage to participate effectively in the campaign. Some ethnic minorities were subjected to public condemnation by extreme right nationalist groups, such as the Ataka party.

The law also discriminates independent candidates. It stipulates that they may only register in single mandate electoral areas, while parties and coalitions are allowed to register their candidates both in the single and multiple mandate electoral areas. The law posts a high barrier for support to independent candidates (at least 10,000 voters in the single mandate area, in which the candidate is registered). In violation of international standards and best practices, this barrier is so high that in some electoral areas it accounts for more than 2.4% of total voters, while in other areas it is closer to 10%. In comparison, the political parties need to prove support from at least 15,000 voters, and the coalitions - from at least 20,000 voters, but for the whole country. Similarly, the steering committees supporting independent candidates are required to make a 15,000 BGN (7,500 EUR) interest-free deposit for a single candidate; for the parties and the coalitions the requirement is to deposit 50,000 BGN and 100,000 BGN (25,000 EUR and 50,000 EUR), respectively, for all of their registered candidates. The interest-free deposit is paid back only if the independent candidate, the party or the coalition gets 1% of the votes of the respective voters.

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<sup>1</sup> ODIHR/OSCE, Republic of Bulgaria: 5 July 2009 Parliamentary Elections, OSCE/ODIHR Limited Election Observation Mission, Final Report, 30 September 2009, p. 15.

## 2. Cooperation with international human rights treaty bodies

Bulgaria's cooperation with the international human rights treaty bodies remained very poor in 2009. Bulgaria is overdue in submitting many reports to different UN treaty bodies. The latest final conclusions for the country on a report submitted to the UN Human Rights Committee date back to 1993, those of the Committee on the Elimination of Discrimination against Women - to 1998, of the Committee on Economic, Social and Cultural Rights – to 1999, and of the Committee Against Torture - to 2004. In 2009, the government submitted reports to the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture. Their review is pending.

In February, the UN Committee on the Elimination of Racial Discrimination (CERD) reviewed Bulgaria's consolidated report, which was submitted with a great delay. A Bulgarian report was last reviewed by this committee in 1997. The new consolidated report was submitted after the committee initiated in February 2008 a country review in the absence of a state report, a mechanism that is extremely rarely resorted to and extremely inconvenient. The committee expressed concern with regard to a series of issues related to the discrimination against ethnic minorities in Bulgaria, including:

- poor representation of ethnic minorities in governmental bodies;
- selective transfer of Roma children to special schools for children with developmental disabilities;
- discrimination against the Roma in employment, housing, healthcare and education;
- use of excessive force by law enforcement officials against Roma;
- spreading racist stereotypes and hostility against minorities by media and organizations, such as the Ataka party;
- poor knowledge and inadequate application by the judiciary bodies of the standards for the protection against racial discrimination.

The CERD recommendations did not result in a serious debate in Bulgarian society. None of the governments in power until the end of the year had introduced any measures to overcome the issues indicated. In some respects, the situation even worsened, for example as a result of the demolition of Roma houses in several Bulgarian cities.<sup>2</sup>

Failure to implement the European Court of Human Rights (ECtHR) judgments remained a serious problem in 2009. By the end of the year, the Committee of Ministers of the Council of Europe continued to monitor 154 ECHR judgments with regard to the implementation of the individual and general measures arising from them. The monitoring on some of these judgments dates back to the beginning of the century. Such is the case, for example, with the group of judgments *Hasan and Chaush v. Bulgaria* concerning state interference in the internal activities of religious communities; these decisions have been monitored since 2000. The monitoring on the group of judgments *Velikova v. Bulgaria* concerning the use of excessive force by police officers, resulting in some cases in murder during detention, also dates back to 2000. The group of decisions

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<sup>2</sup> See **Respect for private and family life, home and the correspondence** below.

*Al-Nashif v. Bulgaria* concerning the deportation of foreigners as a threat to national security is being monitored since 2002.<sup>3</sup>

In March 2009, the Council of Ministers adopted a *Concept Paper on Overcoming the Reasons Behind the Judgments Against the State of the European Court of Human Rights*.<sup>4</sup> The document calls for a series of legislative and other measures that are supposed to deal with the violations established most often in ECtHR judgments against Bulgarian so far. These include:

- Implementation of an effective domestic legal means of protection against slow proceedings in civil and penal cases, by obliging the prosecution to provide the witnesses; more detailed description of prescriptive deadlines; introduction of common compulsory deadlines for preliminary detention in all procedural phases; introducing an opportunity for the court of higher instance to issue instructions on the implementation of effective measures to accelerate the proceedings; establishing an administrative procedure for compensation in case of delayed proceedings;
- Amendment of Article 63, para. 2 of the Penal Proceedings Code, which regulates, when reviewing "guarded detention" measures, the grounds to decide whether there is a real danger of a person to abscond or to commit a crime; the purpose is to overcome the issue of excessive detention and the formalism in judging the lawfulness of such detention;
- Introduction of legal rules allowing a compensation for excessive detention under remand;
- Elimination of military courts, including by a Constitutional amendment, in order to make the investigation of cases of excessive use of force and firearms by police officers more effective;
- Revocation of some powers of the prosecution and establishment of effective judiciary control on its acts;
- Expansion of the scope and the comprehensiveness of judiciary control on acts of non-judiciary bodies, including in alien deportation cases;
- Expanding the possibilities for the enforcement of decisions against state bodies;
- Increasing the legal guarantees on the protection of ownership;
- Higher status and greater role of governmental agents who, apart from defending the state in applications before the ECtHR, should acquire training and coordinating functions and should be able to draft bills and submit them to the Council of Ministers;
- Enhancing the capacity of the state administration and that of the judiciary by trainings in ECHR case law.

The concept was promoted widely and sent to the National Assembly. However, by the end of 2009 none of its recommendations had been implemented.

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<sup>3</sup> For the requirements of the Council of Ministers and the government's actions on these and other cases monitored by the Committee, see the respective chapters of the report below.

<sup>4</sup> *Concept Paper on Overcoming the Reasons behind the Judgments Against the State of the European Court of Human Rights and on Solving the Problems Arising Thereof*, adopted by Council of Ministers decision No. 144 of March 9, 2009, available online (in Bulgarian) at: <http://www.justice.government.bg/new/Pages/Verdicts/Default.aspx>.

### 3. Right to life

The right to life remained a serious problem in Bulgaria in 2009. Article 74 of the *Ministry of the Interior Act*, which allows the use of deadly firearms when detaining a person who is committing or has committed even a petty offense, was not amended. This regulation is inconsistent with Principle 9 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Many police officers who used deadly force in 2009 or in preceding years did so with impunity.

The pre-trial proceedings on the death of Boris Mihaylov, a Romani man from Samokov who was shot dead by a police officer in 2004,<sup>5</sup> were finally terminated. In November, the Sofia Military Court issued a decision that overruled the eighth decision of the Sofia Military District Prosecutor's Office to terminate the investigation. The military court stated that the prosecutor did not conform to the court's instructions to conduct an adequate investigation. On 17 December, however, the Military Court of Appeals overruled the Sofia Military Court decision and confirmed the Prosecutor's Office decision to terminate the proceedings.

In August, the Sofia Military Court of Appeals convicted police officers to between 16 and 18 years of imprisonment for the murder of Angel 'Chorata' Dimitrov, carried out in November 2005 in Blagoevgrad.<sup>6</sup> When the verdict was announced, the minister of the interior, Tsvetan Tsvetanov, immediately stated that the officers had not intended to kill Chorata and that the verdict is unjust. Several hundred police officers protested in Blagoevgrad in support of their former colleagues. Officers in other places also expressed their protest. At the appeal at the Supreme Court of Cassation in December, both the lawyers of the defendants and those of the plaintiffs asked for a new review, albeit on different grounds. The court sustained this and returned the case for a new review by the Military Court of Appeals. Thus, in February 2010 this simple case, simple as it is in terms of facts, was subjected to a third review at an appellate instance, and four years after the incident the defendants are still not convicted.

In November, the Military Court of Appeals finally terminated the reopened investigation of the killing by a Bulgarian border policeman of Yalcin Erdzhan, a Turkish fisherman and a poacher shot dead in April 2008.<sup>7</sup> Initially, the border policeman was indicted. The indictment generated a wave of protests in the nationalist circles and the Burgas Municipal Council made the officer an honourable citizen. Following several terminations and resumptions, the Military Court of Appeals held that the use of firearms by the policeman had been lawful.

In 2009, the Sofia Military Court initiated a case with regard to Bashkim Marladhaku, who was shot and died from his wounds. He was killed on 29 November 2008, in a planned police raid on Rozhen Boulevard in Sofia.<sup>8</sup> Initially, the military prosecutor terminated the case; later, upon appeal by Marladhaku's heirs, on 14 August 2009 the

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<sup>5</sup> See BHC, *Human Rights in Bulgaria in 2005*, Annual Report of the Bulgarian Helsinki Committee, March, 2006, available online at: <http://www.bghelsinki.org/upload/resources/Report2006-English.doc>.

<sup>6</sup> See BHC, *Human Rights in Bulgaria in 2004*, Annual Report of the Bulgarian Helsinki Committee, March, 2005, available online at: <http://www.bghelsinki.org/upload/resources/hr2005-en.doc>.

<sup>7</sup> See BHC, *Human Rights in Bulgaria in 2008*, Annual Report of the Bulgarian Helsinki Committee, March, 2009, available online at: [http://www.bghelsinki.org/upload/resources/Humanrights2008\\_en.pdf](http://www.bghelsinki.org/upload/resources/Humanrights2008_en.pdf).

<sup>8</sup> Ibid.

Sofia Military Court cancelled the termination and returned the case for further investigation. By the end of the year, it had not been reviewed in court.

In 2009, several people lost their lives in detention or due to the use of firearms by police officers. One of them, Plamen Kutsarov, died on 20 January while he was being transported in a police car, after being apprehended in a police raid. The information gathered during the investigation indicates that he was guarded by two teams of four officers from the detention unit. Later, two of them were indicted for murder by negligence. The coroner found five amphetamine pills in Kutsarov's stomach. These were not dissolved, which means they were taken immediately before his death. Should premeditated murder be proven during the investigation, the indictments will be changed. At the time of Kutsarov's detention, there was no arrest warrant for him and he wasn't even mentioned as a witness. However, by the end of the year there were no verdicts on this case.

On 20 September 2009, a row at a crossroads in Burgas resulted in the murder of Kaloyan Stoyanov. He was shot three times by a former police officer. The latter was initially indicted under Article 118 of the *Penal Code* (murder under affectus); the indictment was later changed to Article 119 (murder while exceeding the limits of self-defence). Several organizations, public persons and media in Burgas initiated a series of protests, including the collection of signatures against the indictment of the former police officer. In October, a local newspaper announced that the regional governor, Konstantin Grebenarov, had also signed the petition. The Burgas District Court started the review of the penal case against the defendant in mid-February, but the hearing was postponed due to moves for examinations.

On 14 December 2009, a chase and an intensive shootout on the Trakia Highway resulted in the death of Dimitar 'Bogrovetsa' Mitrev. He was allegedly a member of a highway robbery gang and acted in complicity with two others. Pre-trial proceedings were initiated by the Sofia City Prosecutor's Office. In February 2010, the prosecution informed the BHC that they have formulated their opinion on the case and that the pending decision will most probably be to terminate the proceedings as the use of firearms was lawful.

On 5 November 2009, the ECtHR announced its judgment on *Kolevi v. Bulgaria*. The court held a violation of several provisions of the *European Convention on Human Rights*, including of Article 2 (right to life), with regard to the ineffective investigation of the murder of former deputy prosecutor general Nikolai Kolev. He was shot under unclear circumstances by contract killers in December 2002, after a conflict with then prosecutor general Nikola Filchev. The court held that the murder investigation, which failed to identify the perpetrators, had not taken into account the conflict between Kolev and Filchev and had not sought evidence for the involvement of the latter. The court found serious barriers to the investigation in the very constitutional and statutory structure of the prosecution in Bulgaria, which in effect makes the prosecutor general immune against penal proceedings.

During the year, the Council of Europe's Committee of Ministers continued to monitor the implementation of the individual and the general measures on cases, in which the ECtHR had in the past found violations of the right to life. The Committee of Ministers was not satisfied with the individual and the general measures on none of these cases. It required



reopening of the investigations of cases involving loss of life during detention or as a result of excessive use of firearms by the police. The Bulgarian authorities announced that steps have been made to reopen some of the cases (*Velikova v. Bulgaria, Nachova et al v. Bulgaria*, 2005). In 2009, these new investigations produced no result. On several other cases, however (*Angelova v. Bulgaria*, 2002, *Ognyanova and Choban v. Bulgaria*, 2006), the authorities stubbornly maintained that the investigations had been conducted in compliance with the law and that no reopening was necessary. In these cases the ECtHR explicitly held that the investigations had been inadequate and that was deemed one of the reasons to establish a violation of Article 2 of the *European Convention on Human Rights*. In addition, the Committee of Ministers required the Bulgarian government: to initiate measures to improve the initial and the follow-up training of police officers in the field of human rights; to improve procedural guarantees during detention, more specifically through more effective application of the provisions requiring detainees to be informed about their rights and about the formalities in the registration of the detention; to guarantee the independence of the investigation in cases of abuse by police officers. In 2010, the Committee of Ministers will continue to monitor the implementation of the individual and the general measures arising from these decisions.

#### 4. Protection from torture, inhuman and degrading treatment and punishment

In 2009, too, the Bulgarian *Penal Code* was not amended to include a provision on torture, as recommended by the UN Committee Against Torture in 2004.<sup>9</sup> As in preceding years, the BHC received many credible complaints from people who claimed they were ill-treated by police officers during or after detention. With very few exceptions, these practices remained unpunished in 2009.

In November and December, BHC researchers interviewed 121 inmates in four prisons (Plovdiv, Pleven, Belene and Bobovdol) on the circumstances of their detention and preliminary investigation. The survey is representative of the four prisons, but not of the system as a whole. It covered inmates whose sentences have entered into force and whose pre-trial proceedings were initiated after 1 January 2008. The results and the comparisons with previous similar surveys are presented in the table below:

**Use of force by police years by year**  
% interviewees responding that force was used against them

	2005	2006	2007	2008	2009
<b>At the time of detention</b>	23.2	20.1	17.1	23.1	24
<b>Inside the police stations</b>	23.2	20.8	22.9	23.1	22.3

The results indicate that in 2009, as compared to 2008 and preceding years, there was a lack of any positive dynamics with regard to the use of force by police officers at the time of detention and inside the police station. The share of interviewees who state that such

<sup>9</sup> See BHC, *Human Rights in Bulgaria in 2004*, Annual Report of the Bulgarian Helsinki Committee, March, 2005, available at: <http://www.bghelsinki.org/upload/resources/hr2004-en.doc>.

force has been used during their detention is almost the same as that of the inmates who state that illegal use of force was used against them inside police stations.

The conditions at many Bulgarian detention facilities remained inhuman and degrading throughout the year. This refers most of all to the investigation detention facilities, but also to some prisons.<sup>10</sup> The physical infrastructure and the regime for some categories of detainees, such as those sentenced to life without parole, pose a significant problem from the point of view of inhuman and degrading treatment.

Several cases of massive and indiscriminate use of force by the police against large groups of people were widely discussed by the media and the public. On 14 January police officers used excessive force to deal with a demonstration in front of the parliament. The police were not satisfied with the use of force solely during the clashes with protesters, but continued to chase and beat citizens on the streets of Sofia. Television and personal cameras recorded cases of unprovoked beatings by police officers, often accompanied by insults and curses. The prosecutor's office, albeit with a great delay, initiated an investigation. In September, it ended with a decision not to start proceedings against police officers. In February, MPs turned down a request to create an ad hoc committee to look into cases of police violence, on the grounds that this was aimed at "blocking the work of the Ministry of the Interior."

On 1 August, police officers in Pleven used excessive force against Roma at a local disco club, Bijou. According to witnesses, four or five police officers entered the disco at about 3 a.m. They said they had received a bomb threat and everyone had to leave so that the premises could be searched. Some visitors refused to obey and began quarrelling with the officers. The latter called for special forces backup, which arrived immediately. The two groups of police officers then allowed the Bulgarians to leave the club, but held the Roma inside. When only the Roma and police officers remained inside, some of the Roma were beaten, and then detained at a police station. Some of them were sent to court and sentenced for daring hooliganism under the quick procedure, in two days. The sentences, some of which include effective imprisonment with initial close confinement, were for "obscene actions constituting a severe violation of public order and expressing evident disrespect of society; the actions were marked by extreme cynicism and boldness and were accompanied by resistance to an official body."<sup>11</sup> The beatings have inflicted traumas, some of them severe. Several people's limbs were broken and several people were hospitalized. The prosecutor's office initiated pre-trial proceedings upon complaints by victims. Some of these were terminated with a refusal to hold the officers liable, other continued, but remained incomplete by the end of the year.

In 2009, the ECtHR announced two judgments, in which it held violations of Article 3 of the *European Convention on Human Rights*. In its judgment on *Shishmanov v. Bulgaria* from 8 January 2009 the ECtHR held such a violation in the case of an inmate with diabetes who was held at the Plovdiv prison for three months, between July and October 2000. The court held that the inadequate medical care (lack of an appropriate diet and prescription of expired medicines) constituted inhuman and degrading treatment. On 22 October 2009, the ECtHR announced its judgment on *Stoyan Dimitrov v. Bulgaria*. The

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<sup>10</sup> See **Conditions in places of detention** below.

<sup>11</sup> For a summary of the sentences, see the website of the Pleven District Court: [http://rs.pleven.bg/WEB\\_DECno809.HTML](http://rs.pleven.bg/WEB_DECno809.HTML).

court held a violation of Article 3 in the case of an inmate serving a life sentence. In 2000-2005, he was held at the Sofia Central Prison and at the Kremikovtzi prison hostel - crowded, unhygienic and infested with rats. While at the Sofia Central Prison, he had to use a bucket for physiological needs.

## 5. Right to liberty and security of person

No changes in the legal framework regulating the right to liberty and security in the penal process were made in 2009. The arrest provisions of the 2006 *Code of Criminal Procedure* (CCP), which basically repeat the provisions introduced by the 1999 amendment of the old code, remained in effect. These allow the courts that impose such a measure to rely too much on the weight of the prosecution and to neglect the judgment of how reasonable is the suspicion that has resulted in arrest and whether the goal that is to be achieved by the detention is legitimate. The legal framework allows also for an excessive duration of the preliminary detention when an indictment has been served and the case was transferred to court.<sup>12</sup>

In its review of the implementation of the judgments on *Bochev v. Bulgaria* (2008), *Evgeni Ivanov v. Bulgaria* (2008) and *Kirilov v. Bulgaria* (2008), the Committee of Ministers of the Council of Europe focused its attention on the deficiencies of the legal framework and of the law enforcement related to the application of the arrest measure. With regard to these cases, the Committee of Ministers required the provision of information on the measures that the Bulgarian authorities intend to undertake, in order to bring the national legislation and law enforcement in compliance with ECHR case law. The review of the implementation of the individual and the general measures arising from these judgments continued throughout 2009 and was not completed.

Placement in social care homes of people with mental disabilities continued to be a severe problem. Such placement occurs under an administrative procedure, without control by the court and, as noted by the BHC monitoring on multiple occasions, is often arbitrary.<sup>13</sup> The legislation governing placement remained unchanged during the year.

In November, the ECtHR held a public meeting on the cases *Stanev v. Bulgaria* and *Mitev v. Bulgaria*, which concern the placement of people with mental disabilities in social homes. These cases are supported by BHC together with the Mental Disability Advocacy Center (MDAC). The ECtHR decision is expected in 2010.

The placements under the *Juvenile Delinquency Act* continued to occur in violation of the international standards regulating the right to liberty and security of person. Many of the placements during the year were arbitrary, due to the inadequate access to legal assistance and the inequality between the parties involved in the procedure. In violation of the international standards, the placement in homes for temporary (up to two

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<sup>12</sup> For the deficiencies of this legal framework, see: ECtHR, *Bochev v. Bulgaria*, Appl. No. 73481/01, Judgment of 13 November 2008; CEDH, *Evgeni Ivanov c. Bulgarie*, Requête n° 44009/02, Arrêt du 22 mai 2008.

<sup>13</sup> See BHC, *Human Rights in Bulgaria in 2006*, Annual Report of the Bulgarian Helsinki Committee, March, 2007; See BHC, *Human Rights in Bulgaria in 2007*, Annual Report of the Bulgarian Helsinki Committee, March, 2008; See BHC, *Human Rights in Bulgaria in 2008*, Annual Report of the Bulgarian Helsinki Committee, March, 2009. Available at: <http://www.bghelsinki.org>.

months) placement of minors and juveniles continued to occur as an administrative procedure, without control from the courts. The placement in “crisis centres” for children victims of trafficking also occurred in violation of the international standards regulating the right to liberty and security of person.<sup>14</sup>

In May, parliament adopted amendments to the *Foreigners in the Republic of Bulgaria Act*, some of which regulate involuntary placement in a special home for temporary accommodation of foreigners pending their extradition from the country. According to the amendments of Article 46a, involuntary placement orders may be appealed in the administrative courts within three days of the date of placement. The court reviews them at an open meeting and adopts a decision within one month of the date the case was filed. However, the appearance of the person in court is not mandatory. Every six months the administrative court decides whether to extend, replace or terminate the placement. Although the new provisions do not impose compulsory judicial control, but regulate it only as a possibility, they are a significant improvement of the old regime of appealing the forced placement orders, which allowed for extended periods of administrative detention without judicial control. Still, they are inconsistent with the provisions of international law that guarantee the liberty and security of person, as they do not require the detained individual to appear in court in person and the deadline for the court’s decision is too long.

In 2009, the ECtHR held violations of Article 5 of the European Convention on Human Rights in several cases against Bulgaria. Some of these concern excessive duration of detention during pre-trial proceedings on penal cases (*Titovi v. Bulgaria*, *Rangelov v. Bulgaria*, *Stoyan Dimitrov v. Bulgaria*, *Koriyski v. Bulgaria*, *Ozver v. Bulgaria*). In some of its judgments the court held also a violation of the right to judicial review of the lawfulness of detention, due to the overly formalistic approach of the Bulgarian courts in judging the grounds for such review.

## **6. Independence of the Judiciary and fair trial**

The problems of the Bulgarian judiciary remained serious throughout the year and continued to cause concern among local and international observers. They include uneven distribution of resources, including staff, dependency on political and business interests, corruption and nepotism.

The unprincipled staff policy in the Judiciary was the cause for several public declarations of the Union of Judges in Bulgaria, in which it protested decisions made by the Supreme Judicial Council. In May, the Union accused the Supreme Judicial Council, the supreme managerial body of the judiciary, in lack of principles and in turning a blind eye to the professional criteria in the selection of the head of the Sofia Court of Appeals. A media and public scandal occurred in June, when a Supreme Judicial Council member announced that a political lobbyist had contacted magistrates and council members and had secured managerial positions for judges and prosecutors. Penal proceedings were initiated, the lobbyist was identified and his contacts with magistrates verified. It turned out that many of them had actually talked with him – some as much as 60 or 70 times –

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<sup>14</sup> See **Conditions in places of detention** below.

about pending appointments to high positions within the judiciary. Most of the incriminated magistrates were demoted and only one judge and one prosecutor were dismissed for their contacts with the lobbyist. In September, the Union of Judges in Bulgaria sent another letter to the Supreme Judicial Council, in which the Union asked for an explanation of the allegations that “the real decisions on the appointment of administrative managers of the courts and of judges are made not by the constitutionally designated supreme body of the judiciary but by an unclear and illegitimate ‘friendly circle’”.<sup>15</sup>

In 2009, the ECtHR delivered a series of judgments against Bulgaria, in which it held a violation of Article 6 of the Convention. Many of them concern excessive duration of detention (*Spas Todorov v. Bulgaria*, *Rangelov v. Bulgaria*, *Yankov and Manchev v. Bulgaria*) and of penal and civil proceedings (*Nachev v. Bulgaria*, *Marinova and Radeva v. Bulgaria*, *Ruga v. Bulgaria*, *Donka Stefanova v. Bulgaria*, *Tsvyatkov v. Bulgaria*), as well as the lack of an effective domestic remedy. In *Dimitar Yankov v. Bulgaria* the ECtHR held a violation due to the impossibility of enforcing a court decision against a state body. In *Agromodel Ltd. and Mironov v. Bulgaria* the court ruled a violation due to the lack of access to court on a civil lawsuit for damages, because of the excessive amount of court fees, which the applicants were unable to pay. In *Raykov v. Bulgaria* of 22 October 2009, the ECtHR held a violation of the right to access to court, due to the refusal of the authorities to appoint an official solicitor to the applicant in penal proceedings. In *Petyo Popov v. Bulgaria* of 22 January 2009, the court held a violation in the case of a penal case against the applicant, which has been reviewed by the Supreme Cassation Court in his absence and without the applicant being summoned personally or through his lawyer.

It is assumed that some of the structural problems in the Judiciary, mainly concerning the excessive duration of penal and civil proceedings, will be overcome by the coming into force of the 2006 *Code of Criminal Procedure* and the 2008 *Code of Civil Procedure*. However, other problems concerning effective domestic remedies against excessive duration, enforcement against a state body, hearings in the absence of parties, etc., are not dealt with adequately in the new procedural laws.

In 2009, the Committee of Ministers of the Council of Europe continued to monitor the implementation of the individual and the general measures arising from ECtHR decisions against Bulgaria, in many of which a violation of Article 6 of the European Convention on Human Rights had been found. Of the cases under monitoring, those concerning excessive duration of penal proceedings (*Kitov v. Bulgaria* of 2003 and similar cases) and excessive duration on civil lawsuits and lack of effective internal legal means of protection against it (*Dzhangazov v. Bulgaria* of 2004 and similar cases) had the greatest share. By the end of 2009, the Committee of Ministers was monitoring 50 Bulgarian cases in these two groups, or almost 1/3 of all Bulgarian cases under monitoring. On these cases, the Committee of Ministers requires - apart from legislative reforms - a series of administrative measures in the Judiciary, including computerization of the administration, collection and analysis of statistical data, dissemination of ECtHR decisions and training for judges.

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<sup>15</sup> For the complete letters, see the website of the Union of Judges in Bulgaria: <http://www.judgesbg.com/?m=11&id=1>.

## 7. Respect for private and family life, home and the correspondence

In 2009, the main problems with regard to the respect for private life, home and the correspondence were caused by the worsening of the legal guarantees for protection against the illegal use of special surveillance means and by the eviction of Roma from their only homes, which were demolished by local authorities without the provision of alternative housing. The elimination of the possibility for arbitrary monitoring of inmate correspondence with the adoption of the new *Enforcement of Penalties and Arrests Act* in March was a positive development.

In early November, parliament adopted amendments to the *Special Surveillance Means Act*, changing the legal and institutional framework for control over these measures. The independent National Bureau for Control of Special Surveillance Means (SSM) - established under the December 2008 amendments of the law arising from the ECtHR decision on *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* - was eliminated. It was replaced by a parliamentary committee comprised of representatives of the major political parties. Its competences were reduced. By the amendments to Article 34 (4) of the law, the competences of this control body "to issue compulsory instructions related to improving the use and the application of special surveillance means" was amended into "to make proposals on improving the procedures with regard to the use and the application of special surveillance means." The legal conditions with regard to notifying individuals about the use of SSM against them also deteriorated. In the old act, which was inconsistent with the provisions of international human rights law as it did not contain a requirement for an unconditional notification of the people under surveillance, such a requirement was imposed on the oversight body only with regard to cases in which the use of SSM was unlawful, and only if this did not compromise the purpose of using SSM. With the new amendments, these grounds were expanded over cases when there was a risk to reveal operating methods or technical means of surveillance, and when this creates a risk to the life or health of the undercover operatives or their family and relatives. Expanded like this, the grounds for non-notification allow for notification in very rare cases. In March 2010, Mikhail Ekimdzhiev, a lawyer from the Association for European Integration and Human Rights announced that he had once again filed an application before the ECtHR with regard to the inadequacy of the control by the new committee on the use of SSM.<sup>16</sup>

The only homes of more than 200 Roma were demolished in September in Burgas, on the grounds that the buildings were illegal. No alternative accommodation was provided. Twenty-seven buildings were demolished on 8 September in the Gorno Ezerovo neighbourhood, another 19 homes were demolished on 24 September in the Meden Rudnik neighbourhood. On 16 October, the authorities demolished a home in the Voenna Rampa neighbourhood in Sofia, on the grounds that the 32 Roma living there since 1991 were squatters and that the building was in risk of caving in. No alternative accommodation was offered to the inhabitants, among whom pregnant women and people with disabilities. The eviction occurred in cold, rainy weather in temperatures of around 2-3° C. In all these cases the demolition was supported by the police, which used disproportional force beating citizens. These were typical cases of forced eviction. In such cases international law requires, *inter alia*, adequate consultations with potential victims, informing them about the purposes of the eviction and the alternative use of the land to

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<sup>16</sup> See *The Trud* daily, 9 March 2010.

be vacated, provision of effective internal legal means of protection, including free legal assistance against the eviction decision or access to land in case the victims remain homeless.<sup>17</sup> None of these conditions was met during the forced evictions in Burgas and Sofia.

Attempts to amend the *Electronic Communications Act (ECA)* were made throughout 2009. The purpose was to allow the Ministry of Interior special directorates direct technical access to data on individuals' electronic communications. In December, the National Assembly adopted at first reading a bill that allowed such access. The bill also expanded the possibilities for the use of such information in tracking persons and in solving and investigating crimes, and not only in case of serious crimes (punished by five or more years of imprisonment) as stipulated by the current *ECA*, but also for lesser crimes (punished by two or more years of imprisonment). According to the bill, the data the Ministry of Interior has been given access to are to be kept indefinitely; no notification is to be given to persons affected by this type of surveillance. This, as well as the previous attempts to give the ministry direct access to traffic data, roused strong public discontent. In the end, during the second reading of the bill in parliament, the Ministry of Interior gave up its idea about direct access and the possibility to access communications in case of lesser crimes.

During the year, the ECtHR found several violations of Article 8 of the *European Convention on Human Rights* (right to respect for private and family life) with regard to systematic checks under the correspondence act of the correspondence of persons detained on penal indictments and that of inmates. In its judgment on *Konstantin Popov v. Bulgaria* of 25 June 2009, the ECtHR held such a violation in the case of a check of a detainee's correspondence to his lawyer. The court found this practice inadmissible, as it is not based on facts and specific suspicions, but on the hypothetical probability of abuse. The ECtHR found a similar violation in the case of a check of the correspondence to a lawyer in its decision on *Koriyski v. Bulgaria* of 26 November 2009. In its decision on *Tsonyo Tsonov v. Bulgaria* of 1 October 2009, the ECtHR held a violation of Article 8 of the Convention in the case of a check of correspondence with relatives, administration officials and lawyers of the applicant, who was detained at the Lovech prison several times in 2000-2005. In its judgment on *Georgi Yordanov v. Bulgaria* of 24 September 2009, the ECtHR held a violation of Article 8 of the Convention in the case of use of special reconnaissance means to tape the conversation between a suspect and his lawyer at the police station where the suspect was detained. The court held that given the arbitrariness allowed by the Bulgarian legislation with regard to the control on the use of special reconnaissance means, as established in other cases, taping the conversation in this case did not meet the criteria of lawfulness.

In 2009, the Committee of Ministers of the Council of Europe continued to monitor the implementation of a series of ECtHR decisions against Bulgaria related to violations of Article 8 of the Convention. These include the decisions that establish violations of this provision due to the deportation of foreigners, which has violated their rights to private and family life. The Committee of Ministers insists that these people are admitted back in the country – a demand the Bulgarian authorities resist. As a result, the monitoring of the implementation of these decisions, the first one of them (*Al-Nashif v. Bulgaria*) made as

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<sup>17</sup> See CESCR, General Comment No. 7: The right to adequate housing (Art. 11 (1) of the Covenant): Forced evictions, HRI/GEN/1/Rev.9 (Vol. I), Sixteenth session (1997), §§ 15-16.



far back as 2002, still goes on. The other group of decisions that the Committee of Ministers continued to monitor in 2009 were related to the arbitrary tapping of phone calls and correspondence by special reconnaissance means. The Committee is to judge the adequacy of the amendments of the legislative framework on the protection against arbitrary surveillance by the security services.

## **8. Freedom of conscience and religion**

The legal provisions that regulate the activities of the religious communities in Bulgaria remained unchanged in 2009. However, after the July elections the public environment, in which the religious groups operate, changed significantly. High-ranking government officials and representatives of the Ataka party, which supports the government, came up with public proposals for further restriction of the rights of religious communities.

On 21 January 2009, the ECtHR announced its decision on *The Holy Synod of the Bulgarian Orthodox Church and Metropolitan Inokentii v. Bulgaria*. It concerns the actions of the government on outlawing in 2004, with the help of the police and the prosecution, the followers of the so-called "alternative synod" of the Bulgarian Orthodox Church (BOC) headed by Metropolitan Inokentii. This is a group within the church, which since the start of the democratic changes has opposed the officially recognized wing of Patriarch Maxim, accusing him of collaborating with the communist authorities. The ECtHR condemned the way the authorities dealt with the "alternative synod", holding a violation of Article 9 of the European Convention on Human Rights. In this case the court once again stressed that in a democratic society the authorities may not force the religious communities to obey a single leadership. In this respect, the court also held that the 2002 *Religions Act* does not comply with the ECHR standards of a law, insofar as it leaves a lot of room for discretion to the authorities in defining, which is the legitimate leadership of the religion.

The court believes that the law is formulated under a false pretence of neutrality.

The ECtHR decision was met by strong opposition by wide circles in Bulgarian society and by the Bulgarian authorities. The BOC's official wing came up with a special declaration, in which it denounced the judgment, calling it an interference in the country's internal affairs. The government took no action to meet the demands of the "alternative synod".

At the end of September, minister without portfolio Bozhidar Dimitrov, who is also responsible for the Council of Ministers' Religions Directorate, in a response to a question by a member of parliament, expressed concern that it is too easy to register a religion in our country and said that it is high time that the conditions for the registration of religious communities be changed and that no legal existence be allowed for religions with less than 5000 members. Several days later, in an interview for RE:TV, Tsveta Georgieva, an MP from the Ataka party, stated that "a bill is being prepared to amend the *Religions Act*" and gave some details: to have all religious organisations in the country register again; to introduce a threshold of at least 5,000 members for a religious organisation to be granted religion status; to ban the existence of cult buildings within 50 meters of schools (she gave an example with the "unacceptable situation," in which the prayer building of a protestant church in her home town, Varna, was located "right behind a school").



On October 17, *The Monitor* daily published an interview with another member of parliament, this time from GERB, Dr. Krasimira Simeonova. She proposed something, which can hardly be defined as anything else but absurd: the minimum number of members required for the registration of a religious organisation to be 250,000.

Disturbed by these officially announced intentions to curb the religious rights of Bulgarian citizens, 27 religious and human rights organizations issued a protest declaration on 23 October.<sup>18</sup> On 27 October, it became clear that the largest non-orthodox Christian churches in Bulgaria, the United Evangelist Churches and the Catholic Church, have signed the document. Thus the number of signatories became 35.<sup>19</sup>

The BHC invited minister Bozhidar Dimitrov to the *Obektiv's* discussion club to discuss what he, as the author of the far reaching amendments to the *Religions Act*, has to say in defence of his ideas. The minister did not come, but explicitly authorized Georgi Krastev, a long-term high-ranking official of the Religions Directorate, to represent him in a conversation with human rights lawyer Ivan Gruykin. The conversation was published in the November issue of the *Obektiv* magazine, entitled "The Religions Act Doesn't Need Dramatic Amendments." During the conversation it became clear that minister Dimitrov's official representative has been authorized to state that only small technical amendments need to be introduced in the act, in order to make life easier for the religious communities.<sup>20</sup> This was the end for the time being of this first after the adoption of the act on 20 December 2002 attempt at its revision in a repressive direction.

A series of violations of Bulgarian citizens' religious rights occurred during the year. As in previous years, most of them targeted the Jehovah's Witnesses and the Muslim religion. Other religions were also affected. The most severe violations included the desecration of prayer and/or administrative buildings of the religions. In the night of 12 July there was an attempt to use a Molotov cocktail against the building of the Organization of the Jews in Bulgaria – Shalom, as well as the adjacent former synagogue, a monument of culture. The mosque in Blagoevgrad was set on fire on 5 October. A section of its roof was burned. The mosque in Nikopol was set on fire and burned completely on 7 October. There were also lesser attempts to damage Muslim prayer homes: a window of the Haskovo mosque was broken on 12 July; a window and two glass panels of the main door of the mosque in Krichim were broken in the night of 15 November, a swastika was hewn on the wall next to the door and a marble plaque bearing the name of the mosque was painted with white paint; a window was broken and insults to the Muslims were painted on the walls of the mosque in Kazanluk on 13 November; swastikas and obscene phrases were painted on the walls of the Dzhumaya mosque in Plovdiv on 30 November; swastikas and the phrase "Muslims out" were painted on the walls of the Imaret mosque in Plovdiv on 1 December. The perpetrators of all these incidents were never discovered and brought to court.

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<sup>18</sup> 27 religious and civil rights organisations protest against the planned amendments in the *Religions Act*, press release, available online at: <http://bghelsinki.org/index.php?module=news&lg=bg&id=2755>

<sup>19</sup> *Catholic Church and United Evangelist Churches support the declaration of the 27*, press release, available online at: <http://bghelsinki.org/index.php?module=news&id=2799>

<sup>20</sup> See *Obektiv*, no. 169, November 2009, available at: [http://www.bghelsinki.org/index.php?module=resources&lg=bg&cat\\_id=1](http://www.bghelsinki.org/index.php?module=resources&lg=bg&cat_id=1).

Another extraordinary conference of the Muslim religion was held on 31 October. It was convened on court's order with the purpose to elect – again after a similar conference in July 2008 – the leadership of the religion. However, the Sofia City Court, acting on complaint by former chief mufti Nedim Gendzhev, once again refused to acknowledge the legitimacy of the conference and the results from its work. Thus the division that has existed for many years in the Muslim religion remained. The Supreme Cassation Court is expected to rule which is the legitimate leadership of the religion.

Sources from the Chief Mufti's Office pointed out that in November and December more than 700 delegates to the conference were summoned to police stations at their home towns and at the National Security State Agency (NSSA) and were questioned about who and when has selected them to become delegates and whether they were forced to vote as they did. Late in the autumn NSSA officials, asked to be provided, without a warrant or motivation, the whole documentation of the Area Mufti's Office in Gotse Delchev.

The construction of the Islamic Centre in the Malinova Dolina neighbourhood in Sofia did not commence in 2009, too. According to the Chief Mufti's Office, the Municipality of Sofia has been stalling the project for more than a year and a half by not issuing the necessary construction permits while at the same time not issuing a final refusal. The situation with the mosque in Burgas is the same. The construction was stopped and could not be completed throughout the year due to the barriers that the Chief Mufti's Office alleges to have been created by the Burgas municipal authorities.

A series of violations of the rights of the Jehovah's Witnesses religious community occurred during the year. The construction of the so-called Kingdom Hall in Varna remained frozen in 2009, too. Thus, for the fourth consecutive year the religion cannot build its prayer home, due to the constant administrative hindrances created by the Municipality of Varna. Since the start of the construction works the mayor of Varna, Kiril Yordanov, has on many occasions – including in special public statements, such as the one on 17 September – expressed his will and conviction that as long as he is mayor the Jehovah's Witnesses will not build their prayer home in Varna.

On 2 April, 3 May and 10 May members of the Internal Macedonian Revolutionary Organisation (IMRO) and Ataka rallied in front of a hall in Dobrich, in which the Jehovah's Witnesses held their meetings. On 11 October some 80 IMRO and Ataka supporters rallied against the Jehovah's Witnesses' regional congress that was held in this city. Regardless of the protests, however, the events took place.

According to the Jehovah's Witnesses, there were other attempts to prevent events organized by them, such as one on 26 April in Varna, once again organized by the IMRO and Ataka. On 3 November, a meeting of the local community of the Witnesses in Sandanski was ended by three police officers who presented a warrant for its termination. Their arguments were that according to them no local division of the Witnesses has been registered in Sandanski, although by law such a registration is not compulsory. The religious organisation filed for local registration in April 2008, but has still not received the registration document required by the Municipality of Sandanski.

On 9 April, the day of the Witnesses' greatest holiday (the equivalent of Easter for the other Christian religions), there were attempts to prevent the meetings of the local

divisions in Gabrovo, Smolyan and Ruse. Over 70 people rallied in front of the hall in Ruse where the meeting was taking place, shouting hostile slogans.

On 3 April, in Gorna Oryahovitsa two members of the Jehovah's Witnesses from the United States and Italy were ordered by the police to put an end to their preaching in the city. Similar cases involving a ban to preach in public or door-to-door were registered in Plovdiv on 16 April, 11 June and 16 June.

As in previous years, local newspapers in Burgas, Veliko Tarnovo, Dobrich, Varna and Sofia (a specialized women's newspaper) published many defamatory articles about the Jehovah's Witnesses "cult".

On 27 August, 59-year-old Elena Tomova, a baptized follower of the Witnesses, was found dead at her home in the village of Vlado Trichkovo near Svoge. When it was revealed that notes found in the house expressed her affiliation with the religious community of the Witnesses, several media published sensational allegations that this a "ritual killing" performed by the cult's followers.

## 9. Freedom of expression and access to information<sup>21</sup>

As a whole, the situation with regard to freedom of expression in Bulgaria remained unchanged in 2009. No progress was made in the investigation of the murder of writer Georgi Stoev by a contract killer in 2008. The same holds true for the investigation of the assault on journalist Ognyan Stefanov, beaten with hammers in September 2008.<sup>22</sup> Writer Boby Tsankov was shot dead on 5 January 2009 in Sofia. In 2009, he published a book and a series of articles on organized crime in Bulgaria, including on its relations with high-ranking politicians and magistrates.

The advance of the so-called 'yellow press' continued in 2009. The reasons behind its growing influence and behind the migration of the audience from the mainstream publications to newspapers such as *Weekend*, *Shock*, *Show* and the newly-established *Galeria*, include the evident deficiencies and drawbacks of the national newspapers, the post-communist nostalgia, the "popular taste" that is underestimated by the central newspapers, the different language of the yellow press.<sup>23</sup> This process was accompanied by the termination of media with a strong public orientation, such as RE:TV and Radio France Internationale. A license revocation procedure was initiated against another public radio, K2. Should this radio terminate its operations, this will mean a total crisis of the civil format for the television and radio operators.

Lawsuits for libel were initiated on several occasions against journalists. The monetary claims in these cases were disproportionately high. For example, in April a Pazardzhik newspaper, *Videlina*, was sentenced by the Plovdiv Court of Appeals to pay a

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<sup>21</sup> The section on access to information in this chapter is based on materials of the Access to Information Programme.

<sup>22</sup> See BHC, *Human Rights in Bulgaria in 2008*, Annual Report of the Bulgarian Helsinki Committee, March 2009, available on: [http://www.bghelsinki.org/upload/resources/Humanrights2008\\_en.pdf](http://www.bghelsinki.org/upload/resources/Humanrights2008_en.pdf).

<sup>23</sup> See Bulgarian Helsinki Committee, *Research of the Phenomenon of the 'Yellow Press'*, *Obektiv*, special edition, December 2009, available online at: <http://bghelsinki.org/index.php?module=resources&lg=bg&id=905>

compensation of 20,000 BGN (10,256 EUR) for the publication of a reader's letter describing corrupt practices at the Municipality of Pazardzhik. Venelina Popova, correspondent of the Bulgarian National Radio in Stara Zagora, was sued for libel and for compensation in the amount of 20,000 BGN (10,256 EUR) for announcing on air that a businessman related to former minister of labour and social policy Emilia Maslarova had been detained for threats against the director of the Regional Labour Directorate. No decision was made on this case by the end of the year.

In the spring and the summer of 2009, *The Narodna Volya*, a Blagoevgrad-based newspaper published in Macedonian and Bulgarian, received multiple phone calls containing death threats and insults. The editorial office filed a complaint with the local police, but the perpetrators were never identified and punished.

Ownership of the large media remained unclear. The owners of large, high-rating television stations continue to produce the effects of politics and business intertwined, of corporate interest and political lobbies. No legislative attempts to encourage transparency of media ownership were made during the year.

Hate speech towards ethnic and religious minorities continued to dominate in some media. These include most of all the SKAT television and its programmes Paralax, UpFront, Discussion Studio, etc., as well as the *Ataka* newspaper published by the extreme nationalist party bearing the same name. Hate speech against ethnic minorities, religious communities and people with different sexual orientation occurred sporadically in other media as well. The Electronic Media Council, which statutorily regulates the radio and television operators, remained passive and inefficient. The ethics committees at the printed and the electronic media, whose codes require counteraction to hate speech, were also inefficient.

In the election campaign the state-owned Bulgarian National Television (BNT) showed strong partiality to the ruling Bulgarian Socialist Party.<sup>24</sup> After the elections, however, both the BNT and many other media quickly reoriented themselves to support the newly formed government.

A new development in 2009 was the dissemination of information on the collaboration of owners and leading journalists from major media with State Security, the secret police of the communist regime. The list, which is still incomplete, contains the names of 36 collaborators in the printed and 101 collaborators in the electronic media, including some owners of newspapers, radio and television stations, as well as key journalists. The information the Committee on the Files [of the Former State Security] published on the affiliation of especially influential owners of radio and television stations with the secret services is a part of the huge problem of the media genesis in Bulgaria. The ways in which these people, connected with the former State Security, were influencing the independent Bulgarian journalism in the early years of the transition now become more explicable: manipulated closure of the media space for a series of democratic values, instilling hostile attitudes towards religious and ethnic minorities, exclusion of human rights topics, inspiring mistrust in the need of harmonizing Bulgarian legislation with the

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<sup>24</sup> See **Free and fair elections** above.

European, public defamation of human rights organisations who for many years were branded as “traitors”.

The Council of Europe’s *Convention on Access to Official Documents* was adopted on 27 November 2008. By 8 January 2010, the Convention was signed by 12 countries and ratified by two. Although a representative of the Ministry of Foreign Affairs participated in the work of the experts who drafted the convention, the Bulgarian government did not take any specific actions to have it signed and ratified.

On 23 September 2009, the Council of Ministers submitted to the National Assembly bill No. 902-01-20 on amending and supplementing the *Ministry of Interior Act (MIA)*. Paragraph 69 of the transitional and concluding provisions to the act called for amending the *Classified Information Protection Act (CIPA)*, more specifically Appendix 1 to Article 25 containing a list of the categories of information subject to classification as state secret. The bill provided an opportunity to review and narrow the list in terms of the number and the volume of the categories of information classified as state secret. This was necessary as in their current form some categories reflected the outdated notion of secrecy, which contradicted the principles of transparency, reporting and wide access of the citizens to public information. The bill was finally adopted on 11 November 2009. Thanks to the amendments it became possible to publish information on the number of staff at the public order services. The change achieved harmonization of the practices of submitting statistical information to EUROSTAT. In the other EU member states such statistics is public since 1998.

The legislative regulation of the access to public information remained unchanged in 2009. The Access to Information Programme (AIP), a non-governmental organisation monitoring the practices with regard to the freedom of information in Bulgaria since 1996, conducted the most comprehensive activities with regard to the monitoring of the legislation and the practices, as well as consulting and procedural representation in access to information cases. In 2009, the AIP was sought to provide legal assistance and help to individuals, journalists and non-governmental organisations in a total of 331 cases. Most of them concern specific violations of the right to access to information, as regulated by the *Access to Public Information Act* (more than 200 cases). The remaining cases involve violations of the right to protection of personal data, as well as violations of the right to seek, receive and disseminate information in a more general sense.

In terms of who sought information and advice from the AIP throughout the year, these were most often journalists (in 111 cases), individuals (in 106 cases) and NGOs (in 42 cases). It should be noted that employees seeking advice on the implementation of the *Access to Public Information Act* at institutions subject to its provisions, as well as business representatives are keener to contact AIP. With regard to the grounds for the refusal of information, it may be said that the number of silent refusals remains high; the same holds true for the refusals on the grounds of affected interests of third parties, commercial secret and personal data, as well as the reference to the stipulations of article 13, para. 2 of the *Access to Public Information Act* (information related to the operative preparation of bodies’ acts that has no stand-alone significance).

Many access to information lawsuits were filed with the AIP support in 2009. One of these lawsuits, completed in 2009, concerned information about the 2007 repairs of prime minister Sergey Stanishev’s office. The lawsuit was filed in 2007 on complaint by

Pavlina Trifonova, a journalist at the 24 *Chassa* daily, when the director of the Governmental Information Office (GIO) refused to give her the names of the participants in the procurement, the overall price of the repairs and the price of the new furniture. The grounds for the refusal were that this would affect the interests of third parties who haven't given their consent for the provision of the information, and that the information itself is a commercial secret. The GIO refusal was initially confirmed by a three-member jury of the Supreme Administrative Court in a decision of 8 December 2008. However, in a decision of 31 March 2009 a five-member jury of the Supreme Administrative Court repealed the decision of the lower court and the refusal of the GIO director and returned the file to him for a new decision with instructions on the application of the *Access to Public Information Act*. Since the GIO took no action to comply with the court's decision, a request had to be filed in June 2009, in which the institution was asked to once again make a decision on the request. As a result, in July the GIO provided reference information. The information indicated that the repairs had cost 77,000 BGN (39,487 EUR). When a month later the new government provided the same information, it turned out that the price of the repairs was 300,000 BGN (153,846 EUR).

With regard to the silent refusals, it should be noted that there is ongoing and sustainable judiciary practice whereas the only statutory option for of the obligated person upon receiving a valid request for access to information, is to make a decision to either provide or refuse to provide such access, by notifying the requesting party in writing about its decision. It was on these grounds that the Sofia City Administrative Court (SCAC) repealed on several occasions silent refusals of requests for access to information. Ivaylo Hlebarov's lawsuit against a silent refusal by the mayor of Sofia is an example to this end. In his request, he asked for a copy of the contract for the feasibility study and the accompanying documents on the Solid Waste Management in Sofia Project. The project was to be financed by EU funds and the contract was signed on 24 October 2007 between the Municipality of Sofia and a consortium of three companies. The written defence on the case stated on this occasion the provision of the requested contract is undeniably of great public interest, as this would definitely increase the transparency and the reporting on a pressing issue, such as waste management in the capital (in April, the government declared a crisis situation in Sofia due to the problems with the waste). The Municipality of Sofia appealed the court's decision before the Supreme Administrative Court. The case is to be reviewed on 14 April 2010. A silent refusal was also repealed in the lawsuit filed on complaint by the "WWF – World Wildlife Fund, Danubian-Carpathian Program, Bulgaria" Association against the silent refusal of the Sofia State Forestry to provide information. The information requested was whether in 2008 Vitosha Ski Ltd. had paid the land use fees for land in the area of the Aleko tourist facility in the Vitosha Natural Park, and for which months.

One case should be noted with regard to the appeals of explicit refusals. On behalf of Nikolai Veselinov, the AIP appealed an explicit refusal of the Ministry of Environment and Water's (MOEW) chief secretary to provide access to information on the violations established by the ministry's inspectorate with regard to how documents were kept and signed at the Sofia Regional Inspectorate on Environment and Water. With the change of government, however, the refusal was repealed by the new minister and the information was provided to the requesting party. Another case, in which the refusal was repealed, involved the refusal of the Municipality of Sofia to provide a copy of the legal analysis of the implementation of the concession contract between the Municipality and Sofia Water Ltd. concerning the operation of the Sofia water and sewer system over the 2000-2007

period. The information was requested by Gancho Hitrov, chair of the National Committee for the Improvement of Water-Supply in Bulgaria. The mayor's refusal stated that since the legal analysis was formulated by a law firm, it constituted lawyer's secret. In a decision of 16 June 2009, SCAC repealed the mayor's refusal and returned the file to him for a new decision. In its explanations, the court notes that the legal regulation of the term lawyer's secret provides reason to assume that only a person in the capacity of a "lawyer" is subject to protecting it, while the mayor as an obliged person under the *Access to Public Information Act* does not have such capacity. Therefore, the mayor is not statutorily required to protect such information and he cannot invoke lawyer's secret in deciding to refuse to provide public information.

In 2009, the Ecoglasnost National Movement, with support from the AIP, won finally and at second instance in the Supreme Administrative Court the lawsuit against the refusal of the Ministry of Environment and Water to provide access to the minutes from the meeting of the National Council on Biodiversity held on 25 November 2007 when only two votes lacked for the buffer zone of the Rila Mountain to be included in NATURA 2000. In its explanations the court notes that the requested information pertains to environmental issues. Therefore, the court of first instance has correctly taken into account the existence of an applicable special act regulating these public relations, the *Environmental Protection Act (EPA)*; the act provides for the high public interest in such information and has undoubtedly not been considered in the formulation of the appealed administrative act. When the court announced its decision in August, a copy of the requested minutes was provided to the requesting party.

State and municipal bodies were made to provide public information in other cases. For example, the chair of the Lovech Municipal Council complied with the decision of the Supreme Administrative Court of April 2009, which repealed its refusal and obliged him to provide access to information about the specific amounts paid by the Municipal Council to local and national media for the publication of ordinances and announcements. In a letter dated 12 May 2009, the chair of the Municipal Council provided Tsvetan Todorov, editor-in-chief of *The Narodna Glas* newspaper, the requested information about the Lovech budget funds spent for local and national publication in 2004-2006. In yet another case, in a decision of 25 May 2009, SCAC repealed a silent refusal of the State Agency on Youth and Sports (SAYS) to provide access to the list of legal entities, including sports federations, which have received financial assistance from SAYS between 1 January 2007 and 1 January 2009. The lawsuit was filed on complaint by the "WWF – World Wildlife Fund, Danubian-Carpathian Program, Bulgaria" Association. When the court announced its decision in June 2009, SAYS published all the requested information on its website.

## **10. Freedom of association and peaceful assembly**

In 2009, freedom of association and peaceful assembly in Bulgaria faced severe trials. On several occasions the right to peaceful assembly was arbitrarily restricted. Restrictive changes were introduced in the legislation regulating this sphere. In blatant contradiction to international standards, judicial bodies restricted the right of association of several unpopular groups.

On 14 January, the police used disproportional force to disperse a rally in front of parliament. Scores of citizens were arbitrarily arrested, attacked and beaten by police

officers in Sofia's streets. The prosecution refused to initiate preliminary proceedings against MIA officers.<sup>25</sup>

On 16 March, then mayor of Sofia Boyko Borisov did not allow a peaceful protest of employees from a cleaning company, most of whom were Roma. Their protest concerned the termination of the concession contract with the company, as a result of which they lost their jobs.

On two occasions in 2009 the authorities in Blagoevgrad violated the right to peaceful assembly of Macedonians in Bulgaria. On 24 April, representatives of the unregistered UMO Ilinden organisation notified the mayor of Blagoevgrad that they intended to celebrate the anniversary of Gotse Delchev's murder at his monument at 5 p.m. on 4 May. On 30 April, municipal staff gave one of the people who had filed the notification, Atanas Urdev, a letter inviting representatives of the organisation to take part in the 10 a.m. celebrations on the same date, "together with the other representatives of political and civil organizations." In the afternoon of 4 May several activists of the movement were arrested and taken to the police station where the wreath and the ribbon they were carrying were confiscated. In this way the authorities prevented the celebration.

On 31 August, UMO Ilinden representatives notified the mayor of Blagoevgrad of their intention to celebrate the Macedonian Genocide Day at Macedonia Square on 12 September. The mayor never responded to this notification. Three days before the event representatives of the movement from Sandanski had the license plates of their cars stolen. The police in Sandanski delayed the issuance of new license plates, obviously with the purpose of preventing their trip to Blagoevgrad. Nevertheless, several UMO Ilinden activists started towards Macedonia Square. On their way they were stopped by a plainclothes' policeman who threatened them that their celebration won't be allowed and that it may result in a clash. The activists decided to go home, but were then arrested and taken to the police station. There, they were given police orders to abstain from illegal actions; a wreath, a ribbon with the inscription "OMO Ilinden" and three posters were confiscated.

In 2009, the courts refused to register several organisations of Macedonians in Bulgaria, on grounds that expressed an openly discriminating attitude to the Macedonian minority and which blatantly contradicted the international provisions on the freedom of association. On 29 May, the UMO Ilinden – PIRIN political party received a final refusal of its next application for registration by the Supreme Cassation Court. The party has already won a case with the ECtHR with regard to refusal of registration in 2005. It has filed another complaint against the refusal of registration that followed the court's decision. The decision of the Supreme Cassation Court of 29 May provides grounds for a third complaint in Strasbourg.

On 7 May, the Sofia Court of Appeals sustained the decision of the Blagoevgrad District Court to deny registration to the Nikola Vaptsarov Macedonian Cultural and Educational Society. The court held that "there is no distinctive Macedonian ethnos in Bulgaria, while some of the goals listed in the association's by-laws imply the existence of such an ethnos." According to the court, this contradicts Article 6, para. 1 of the Constitution.

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<sup>25</sup> See **Protection against torture, inhuman and degrading treatment** above.



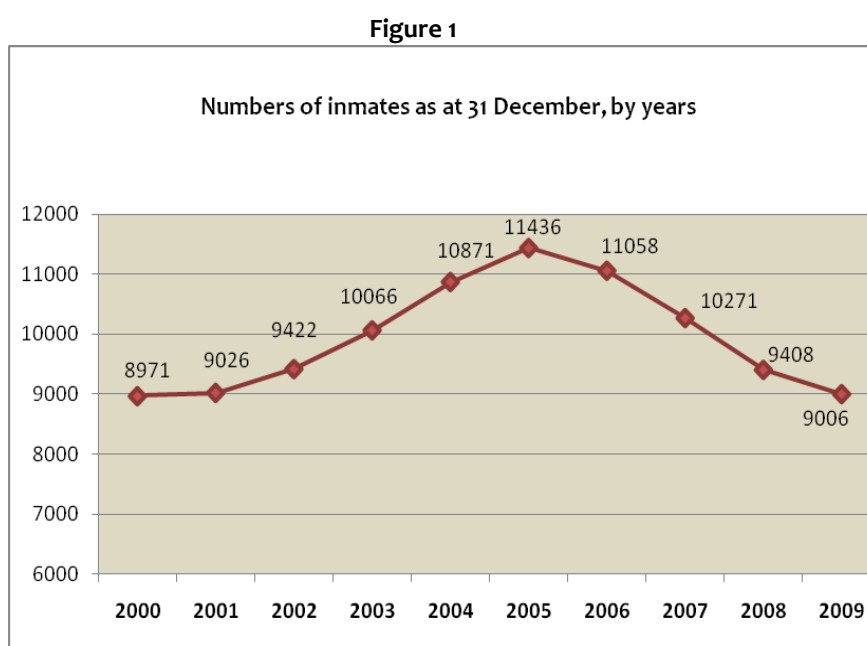
The saga of the registration of the Association of Repressed Macedonians in Bulgaria continued throughout the year. Following the refusal of registration in December 2008 and several returns of documents, postponements and additional requirements by the Blagoevgrad District Court, in the end it still denied the registration on 19 February 2010. In its explanations the court held that the activity of the association will affect “the integrity of the Bulgarian nation,” as well as that its purposes imply “to ignore the Bulgarian character of certain geographic regions” and that attaining them will “undoubtedly have a negative impact on the integrity of the Bulgarian nation and on the sovereignty enshrined in Article 2, para. 2 of the Constitution.”

At the end of 2009 and early 2010, parliament adopted amendments to the *Meetings, Rallies and Manifestations Act*. Some of them were aimed at making the act, adopted under the old constitution, compliant with the institutions under the 1991 *Constitution*. At the same time, with these amendments parliament allowed an opportunity to the state institutions to restrict any public event close to their facilities by establishing forbidden zones for such events. This caused great public outrage. In February 2010 the president sent the bill back to parliament, asking that specific spatial parameters be included to define the minimum size of designated public areas, in which public events will not be allowed. By March 2010, parliament had not made a decision on the presidential veto.

## 11. Conditions in places of detention

### *Prisons and inmate dormitories*

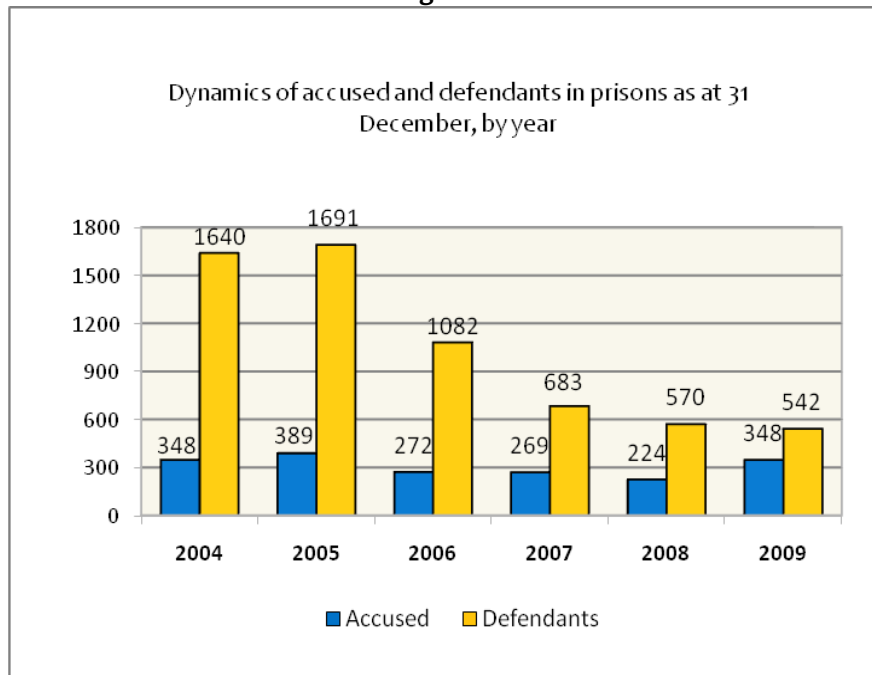
The Bulgarian prison system is comprised of 12 prisons, of which one for women, and one correctional facility for juveniles. All prisons have dormitories of open type and several have also dormitories of closed type. By 31 December 2009, the inmate population was 9006. Figure 1 below shows the number of inmates in prisons and prison dormitories in 2000–2009.



Source: DG Enforcement of Sentences

The trend towards a reduction of the total number of inmates was sustained in 2009, too. During previous years, such a reduction was seen also with regard to the number of the accused and the defendants in the prisons. However, in the last year there was a significant increase in the number of accused individuals:

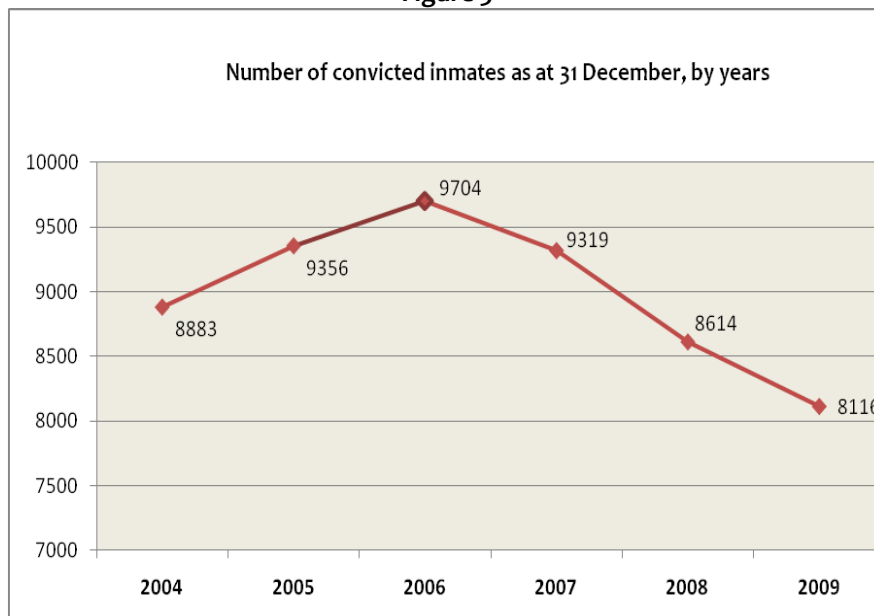
**Figure 2**



Source: DG Enforcement of Sentences

A trend towards reduction was also typical for the number of convicted inmates in prisons over the past three years:

**Figure 3**



Source: DG Enforcement of Sentences

The legislative changes introduced after 2002 resulted in a process of moving convicts with good behaviour out of prison facilities and into prison dormitories. This resulted in a gradual increase of the number of inmates in the open and transitory dormitories. At the end of 2008, the total number of inmates in dormitories was 2,253. With the entry into force of the new *Enforcement of Sentences and Guarded Detention Act* on 1 June 2009, the transitory dormitories were eliminated and replaced by the open dormitories. By 31 December 2009, the number of inmates in such dormitories was 1,853, i.e. 400 less than in the preceding year; the number of inmates in closed dormitories was 905.

Existing prison buildings are old and obsolete, which makes it extremely difficult to bring them in line with the international standards on the treatment of inmates. No new prisons have been built during the years of transition. The prison buildings in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna and Burgas were built in the 1920s and the 1930s. Built more than 100 years ago, the Sofia prison is the oldest. The reduction of the total number of inmates and the practice of extended use of prison dormitories resulted in a reduction of the overpopulation in the main buildings of most prisons. Nevertheless, in 2009 the living space in the cells of the Varna, Sofia and Pleven prisons was insufficient, which required the use of double and even triple bunks. The cells in several prisons have no lavatories and the inmates have to use buckets during the night. In December 2008, the Council of Ministers adopted a Strategy for the Development of the Correctional Facilities (2009-2015) and an Investment Programme for Construction, Reconstruction and Modernization of Prison Facilities.

The explanatory notes to the strategy point out that the living space in the cells is approximately 2 m<sup>2</sup> per person while the recommended standard is 6 m<sup>2</sup>; most cells do not have drinking water, their windows are small and do not provide sufficient fresh air and sunlight. The main purpose of the strategy was to modernize and reform the penitentiary system in compliance with the European standards and to make prison conditions more humane. The repairs and the reconstruction of some prisons continued in 2009. All cells in the Vratsa prison were equipped with lavatories. New prison construction was obviously not a priority at the end of the mandate of the old and the beginning of the mandate of the new government.

Prison medical care is isolated from the national healthcare system in terms of facility standards, administration, number of medical check-ups, reporting, statistics, prophylactics and prevention. The main problems in this field arise from staff and equipment deficiencies and from the impossibility to provide the necessary volume of specialized assistance. The prison medical centres fail to meet the requirements of the *Medical Institutions Act*. Apart from these problems, there is a lack of independent control on the medical activities and on the sanitary and hygienic conditions which affect directly inmates' health status. Ensuring healthy and safe labour conditions for working inmates is difficult, especially considering the lack of an effective mechanism for independent control. Work quotas and remuneration should not be defined subjectively by prison officials. Inmate labour is exempt from social security payments and from compensation for workplace accidents.

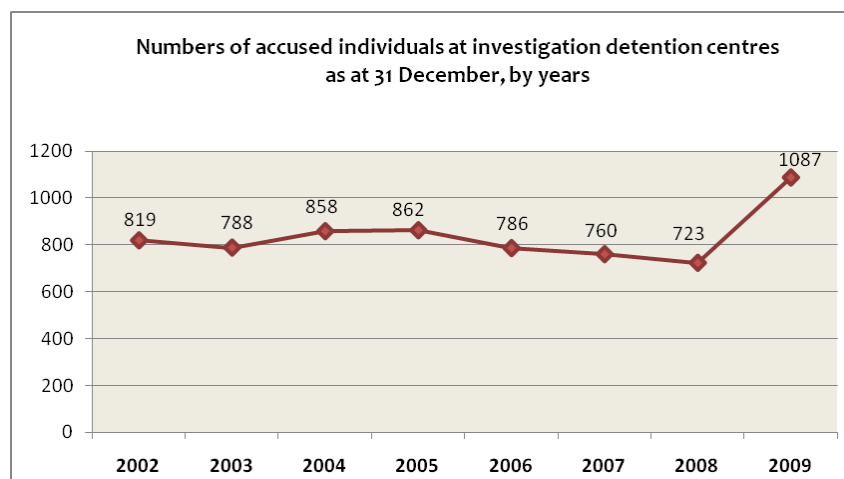
Despite the explicit legal provisions, some inmates still complain of unjustified use of physical force and means of restraint. This is why the disciplinary actions taken by prison guards must be documented strictly and effective investigations by an independent body should be carried out with regard to all such complaints.

A new *Enforcement of Sentences and Detention Under Remand Act* ('*Enforcement of Sentences Act*' hereafter) came in force on 1 June 2009. It includes explicit regulation of the living space and the living conditions for every inmate, although the application of these requirements is delayed over time. For the first time in the history of the penitentiary the law requires the adoption of an ordinance defining annual budget standards per inmate. The ordinance, which stipulates that the state budget should include the funds needed for inmate subsistence, was adopted in the last days of 2009. However, the standards, which are listed in 14 paragraphs, repeat the provisions of the *Enforcement of Sentences Act* and contain no specific parameters. Also for the first time, the new act introduces an explicit ban on any kind of torture, cruel or inhuman treatment. At the same time, the types of penitentiary regimes are reduced and prison dormitories can now be only of open and closed type. In line with the international standards, the act strengthens the role of public oversight, i.e. the Ombudsman, and that of the municipal monitoring commissions. Under the new provisions, the mandate of the commissions is expanded to include public control on the activities of the penitentiary facilities. The ban to receive food, clothes, shoes, books, etc. sent as mail packages may be regarded as a serious restriction of inmate rights. Such a ban cannot be justified by the claim that the restriction of the right to mail packages will prevent banned items from entering the prison. The regulation of health controls and hygiene in prisons in the new act may be regarded as a deficiency. These are to be inspected by specialists from prison medical centres, which makes the independence and the objectivity of the controls questionable.

### **Investigation detention centres**

By 31 December 2009 there were 43 investigation detention centres with 1,087 detainees arrested under the *Code of Criminal Procedure* (see Figure 4).

**Figure 4**



Source: DG Enforcement of Sentences

In comparison to previous years, the number of detainees at the detention centres is significantly larger. The detention centres are used not only for 'detention under remand,' but also for other purposes, such as 72-hour detention, detention of persons for whom APBs have been issued and persons transferred "by delegation." In 2009, the

overpopulation of detention facilities, especially of those in the regional centres, was extremely high. The general conditions in the detention centres are significantly worse than those in the prisons. For the first time after the beginning of the democratic changes in Bulgaria, the investigation detention centres and the prisons were given long-term attention in the governmental Strategy for the Development of the Correctional Facilities (2009-2015), and the conditions in them became a priority. The end of mandate report of the Ministry of Justice indicates that designs for the construction of new detention centres in Petrich, Gabrovo, Lovech, Plovdiv and Shumen and for the improvement of the existing ones in Vidin, Ruse, Haskovo and Razgrad were developed by mid-2009; on 10 June 2009, the minister of justice opened the new investigation detention centre in Plovdiv, which was built in compliance with the international standards on penitentiary facilities and human treatment of detainees.

The investigation detention centre system in Bulgaria is comprised of detention and administrative facilities at the 28 regional centres, as well as in smaller communities where a need for such facilities has been established. The facilities in some of the larger regional cities (Plovdiv, Varna, Ruse, Pleven, Veliko Tarnovo) have no territorial detention centres, which determines the greater population in them. Permanent overpopulation exists also at the border detention centres in Svilengrad, Petrich and Slivnitsa. The general conditions at the detention centres remain inhuman and degrading. The cells in most detention centres have no windows, i.e. the light is artificial and ventilation is hindered. To compensate for this, additional grated openings have been made in the doors or the doors themselves are grated, thus allowing to improve lighting and ventilation. However, sometimes this violates the right to personal life as the inmates are visible at all times. The cells in some detention centres (Vratsa, Sliven, etc.) are extremely small. In contradiction to international standards, the open space for each inmate in these detention centres does not exceed 1 m<sup>2</sup>. In addition, most of them lack open-air walking facilities. Such facilities exist at only 16 detention centres. Another ten detention centres have indoor premises for physical exercise, while in another 18 there is no possibility to provide such premises and the inmates get a walk only when allowed to visit the toilet. The great number of convicting decisions of both domestic courts and judgments against Bulgaria at the European Court of Human Rights in Strasbourg are a confirmation of the deplorable conditions at the detention centres.

### ***Correctional and educational facilities for minors and juveniles (CBS and SBS)***

The system of the social educational boarding schools (SBS) and the correctional boarding schools (CBS) changed significantly in the past years. The number of boarding schools was reduced from 33 in 2000 to nine in 2009, a direct result from the 2004 legislative changes that restricted the arbitrariness in placing children at such institutions. In 2004, court proceedings were introduced in the placement procedure; however, it is formalistic and not in compliance with international fair trial standards and guarantees for the rights of children deprived of their liberty. The grounds for placement in a boarding school provide opportunities for significant arbitrariness, as they include no clear definitions of the “anti-social acts”, like the ones incorporated in the *Penal Code*.

At these institutions children who have been placed there on purely social grounds are still mixed with children who have committed anti-social acts. The remoteness of the boarding schools from large cities is a barrier to the opportunities for social adaptation of

the children and hinders quality medical services, fundraising, transport, the hiring of skilled teaching staff, etc. It is impossible for the teaching process at the boarding institutions to be at the same level as in the mainstream schools. It is, therefore, necessary to review the existence of SBS and CBS in their current form and to seek alternatives for correctional influence on the children who are in conflict with the law. This is the spirit of the recommendations to Bulgaria of the UN Committee on the Rights of the Child of 23 June 2008, according to which it is necessary:<sup>26</sup>

- to establish a special system of courts for children in conflict with law;
- to eliminate the term “anti-social act”;
- to abstain from punishing deviant behaviour of children under penal age and defining “social and protective measures” instead;
- to establish a system of social and educational measures as an alternative to the deprivation of liberty, and to ensure their effective application;
- to use deprivation of liberty, including at involuntary education institutions, only as a last resort;
- to provide the children in conflict with law opportunities for contacts with their families and with civil society organizations.

### ***Institutions for temporary placement of minors and juveniles and crisis centres***

The institutions for temporary placement of minors and juveniles in Sofia, Plovdiv, Varna, Burgas and Gorna Oryahovitsa accommodate children who have committed anti-social acts, children without a domicile, vagrant or beggar children, as well as children who have left without permission compulsory education or involuntary treatment facilities. These institutions report directly to the Ministry of Interior. In essence the stay at these homes is a short-term deprivation of liberty. The stay cannot exceed 15 days and the placement is ordered by a prosecutor. In exceptional cases the stay may be prolonged to two months. The legislative framework concerning the placement of children in these institutions contradicts the international standards, which require that any deprivation of liberty be imposed by the courts. The placement of children in such institutions, which is a deprivation of liberty, cannot be appealed. There is a contradiction with international standards also with regard to the right of the children to a lawyer from the time of detention, during the stay or after the measure has been imposed.

The placements at the crisis centres, which exist in Bulgaria since the autumn of 2006 and are used to accommodate children victims of trafficking for a period of up to six months, also contradict the standards on the rights of the child. Such placements are effected only by an instruction or by an order of the directors of social assistance directorates. In contradiction to Article 26 of the *Obligations and Contracts Act*, there is no court ruling on the placement orders, despite the fact that crisis centres are in essence specialised institutions. As in the case with the institutions for temporary placement of the Ministry of Interior, the procedure for the placement of children at crisis centres does not afford for participation of a lawyer. The arbitrariness of the placement creates serious problems for the children at the crisis centres. Apart from children victims of trafficking, children who have committed anti-social acts are also placed there. In some cases, upon the expiry of the six-month period, placement is extended for another six months by another

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<sup>26</sup> See Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Bulgaria, CRC/C/BGR/CO/2, 23 June 2008.

order. In essence, the placement at crisis centres constitutes deprivation of liberty and therefore the government needs to urgently take measures to prevent such severe violations of the rights of the child from happening.

## **12. Protection from discrimination**

The case law of the national bodies working on the protection from discrimination, the Commission for Protection against Discrimination and the courts, expanded and developed in 2009. Both the practices of the Commission and those of the courts were marked by achievements. At the same time, there were also deficiencies.

### ***Hate speech***

The case law of the Commission for Protection Against Discrimination (CPAD) on hate speech developed in a positive direction over the year. On several occasions, the CPAD ruled in line with the international standards that stereotypical negative statements against minorities are a violation of human dignity and create a hostile and abusive environment in contradiction with the law. The CPAD is consistent in advocating that freedom of expression is not absolute and that instilling intolerance goes beyond its boundaries. The commission ruled against hate speech in a series of printed and electronic media, qualifying it as abuse. It obliged these media to introduce specific and effective self-control means in order not to allow publications disseminating prejudice. In some cases the CPAD explicitly stated that the measures taken by the media to prevent discrimination are “formalistic and declarative.” In one case it obliged a newspaper to join the Media Code of Ethics. It obliges the responsible persons to publish at their expense its convicting decisions, as well as apologies for their statements. In cases of negative general statements about the Roma, CPAD obliges the media not to mention the ethnic origin when this is not pertinent to the meaning of the information. The CPAD obliges the media to report within a specific deadline what measures it has implemented to ensure compliance with the body’s decisions.

There were some positive practices of the Supreme Administrative Court (SAC) as well. In December, it found a Sofia municipal mayor guilty of abuse of Roma. The court held that the mayor anti-Roma statements on a radio station – “the cows will be less in the way than a Gypsy neighbourhood,” “such a Roma community is ten times more dangerous when located close to residential areas than a landfill” – constitute a violation of the dignity of all Roma and create an abusive environment for them. The court also held that it did not matter whether it was the mayor’s intention to humiliate the Roma, it was sufficient that this was the result of his actions. The CPAD penalised the mayor with a fine in the amount of 1 000 BGN (513 EUR), a ban to similar statements in the future and an obligation to apologise on the same radio station, as well as to publish at his expense the CPAD decision in a national daily. The mayor complied. The SAC final verdict confirmed that the mayor’s hate speech against the Roma, including the statement that “the Roma have to gradually cultivate, to develop normal hygienic habits because the other people suffer from their lack of basic hygiene” is a breach of the law. This is the first case, in which an official has been sentenced to publicly apologize for hate speech and to publish the verdict at his expense.

In July, the SAC ruled against a television station, which aired a stereotypical anti-Roma broadcast. The court held that such broadcasts create a hostile environment among the public. The court confirmed the CPAD decision to oblige the media to adopt internal mechanisms for the prevention of all forms of discrimination.

On the other hand, the CPAD consistently refuses to acknowledge that apart from being harassment, hate speech is also incitement to discrimination. In one case, the CPAD refused to accept that the open incitement to discrimination against a minority religious group by an employee of the Bulgarian Orthodox Church is hate speech. In another case, the CPAD refused to accept that the statement of an employer to an employee with a mental disability that she “has to retire” because “she has depreciated as a car” constitutes harassment. The CPAD also refused to accept that a television journalist had committed harassment against a group of young people with developmental disabilities in a specialised institution by calling them “the crazy ones” in their presence. The CPAD did not acknowledge that television journalists had engaged in harassment of people with mental disabilities by behaving aggressively and filming them against their will in their home, accompanying their coverage with stigmatizing comments.

The civil courts did not generate much case law with regard to hate speech in 2009. In December, the Supreme Court of Cassation repealed a decision of the Sofia City Court, in which the politician Volen Siderov, leader of the nationalist Ataka party, was found guilty of anti-Turkish propaganda. The court acquitted Siderov with regard to some of his statements, while invoking the freedom of speech considerations for others. In September, the Sofia City Court refused to accept that Siderov’s homophobic propaganda constitutes discrimination.

### ***Discrimination against women***

The CPAD penalised a company for paying unequal remuneration to a female employee due to her sex/pregnancy. The body held that the principle of equal pay irrespective of the sex of the employee is imperative and restricts the freedom of contracting.

The SAC penalised an employer for not taking measures to terminate sexual abuse at the workplace. However, in July, the same court refused to accept that the gender quotas for student admission to a military university, which in some cases either completely exclude women or bring them down to a quarter of all students, constitute gender discrimination.

In November, an informal women’s group protested against the psychological and physical violence exerted by medical staff on women during labour. The protesters called for respect of the will of the mothers, including with regard to the medical interventions, and for birth free of abuse.<sup>27</sup>

### ***Discrimination against children***

In two cases the CPAD established that the ban imposed on children below the age of seven to visit a department store constitutes discrimination by age. The CPAD fined the trader and obliged him to eliminate the illegal restriction. In another case the CPAD ruled that the physical violence exercised by a teacher against a student, regardless of its

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<sup>27</sup> For more details, see <http://nenanasilieto.wordpress.com/>.



extent, humiliates the child's human dignity and constitutes discrimination. It fined the teacher and prescribed him to abstain from such ill-treatment.

In several decisions the CPAD confirmed the right of children with disabilities to study together with other children. It announced that integrated education is the rule and that a transfer to special schools is only allowed when all other options for integrated education have been exhausted. The CPAD held that children with disabilities have the right to special, different care, as their access to education is a priori unequal. The body held that the failure to provide a supporting environment, as well as the lack of measures to ensure elimination of the abuse of children with disabilities by their classmates, constitute abuse. The CPAD obliged teachers and principals to take effective measures to provide integrated education and support to children with disabilities and to prevent and eliminate all forms of discrimination at school.

In October, the CPAD found the minister of education guilty of not undertaking special measures to provide effective and equal access to school for children with disabilities. The commission held that the legislation itself is discriminatory, as it does not regulate the production of the special programmes and materials necessary to adapt the education to such children. These children cannot choose a school and a specialty, as the state defines the specialties they study. For them secondary education is mandatorily vocational, and only in certain professions. The education of the students at special schools ends at the age of 16. The children are segregated. The Ministry deprives children with disabilities of a supporting environment and customised education. The CPAD recommended the minister to initiate legislative reforms, including special measures to ensure education adapted to the specific needs of each child, regardless of their age.

In another case, the CPAD also held that the compulsory school age of 16 discriminates children with disabilities as it is inconsistent with their rate of learning, and recommended legislative amendments.

In one case, the CPAD approved an agreement between a mother of a child with disabilities and the principal of a mainstream school, according to which the child was not to study at class but on the basis of an individual curriculum. The CPAD accepted this refusal of integrated education without establishing that such an education is objectively impossible in this case, due to reasons beyond the control of school authorities. Contrary to what the CPAD believes, such a withdrawal does not correspond to the purpose of the *Protection Against Discrimination Act*.

### ***Discrimination against people with disabilities and patients***

In May, the SAC found the Social Assistance Agency guilty of lack of access to its territorial offices. The court confirmed the CPAD decision to fine the institution and to oblige it to provide access for people with disabilities. In June, the same court found the Municipality of Plovdiv guilty of inaction in adapting the city environment to the needs of the people with disabilities. The court awarded compensation to a woman in a wheelchair because of the abusive and humiliating inaccessibility.

In August, the SAC found the National Health Insurance Fund (NHIF) guilty of discrimination against children under seven who suffer from phenylketonuria, due to the refusal to reimburse the special dietary food they need. In June, the CPAD established

that the exclusion of mucoviscidosis from the list of diseases, for which the NHIF pays the treatment of persons over the age of 18, constitutes discrimination. It instructed the minister of health to amend the respective ordinance by including the disease.

The CPAD held that a utility company is discriminating the parents of children in wheelchairs and people with disabilities by not ensuring them unhindered access to its payment offices in Sofia. The body obliged the company to ensure free access by constructing the necessary enhancements, and fined it.

### ***Discrimination against ethnic minorities***

With regard to a complaint of police violence and abuse of Roma, the CPAD obliged the Veliko Tarnovo Regional Police Directorate to conduct annual trainings of its staff on discrimination, racism and ethnic profiling.

The SAC adopted a final decision against the discrimination by an employer who refused to allow a Roma to a job interview. The lower instance, the Sofia City Court, had awarded the plaintiff compensation in the amount of 600 BGN (300 EUR), stating explicitly that a higher compensation should be paid for such a violation.

In one case the CPAD accepted, in line with international law, that the ethnic origin is a matter of self-identification and not subject to being proven. The body held harassment on the grounds of ethnic origin against a Bulgarian Turk whom the municipality issued an untrue certificate that he was born with his Bulgarian names, while these were forcefully given to him by the state. The CPAD decided that this action was humiliating and created an abusive environment for the person, contrary to his right under the *Framework Convention for the Protection of National Minorities* to have his minority name and identity officially recognised. It confirmed Bulgaria's confession in the country's first report under the *Framework Convention for the Protection of National Minorities* that the so-called "revival process" is the most severe violation of minority rights over the period.

At the end of 2009, the government sent a strong anti-minority message. The prime minister stood openly behind the populist and xenophobic demand of the Ataka party that a referendum be held on the news in Turkish on Bulgarian National Television. By doing this the government expressed its support for the nationalist attack against the public presence of minorities. Although the prime minister later gave up the initiative on the grounds that it will have negative reactions in the EU, he did not change in principle his position on the rights of minorities and their (in)dependence of the will of the majority.

In February, the European Commission against Racism and Intolerance (ECRI) published its *Fourth Monitoring Report on Bulgaria*. In terms of the progress achieved since the previous report (2004), ECRI notes the *Protection Against Discrimination Act* and the protection it provides the Roma; the creation of the Ministry of Education and Science's Centre for Educational Integration of Children and Students from Ethnic Minorities; the country's participation in the Decade of Roma Inclusion 2005-2015 and the programmes aimed at solving the educational, housing, labour and other problems of the Roma; the integration of the Turks in the political life and at governmental positions; the adoption of the *Legal Assistance Act* and the creation of the National Bureau for Legal Assistance; the adoption of the Media Code of Ethics, which prohibits the unjustified announcement of

race, religion or ethnos; the adoption of the National Programme for Refugee Integration; the new and stricter regulations for the use of firearms by the police under the *Ministry of Interior Act*.

In terms of deficiencies, ECRI noted the failure to apply the *Penal Code* provisions on racist crimes; the insufficient effectiveness and funding of Roma programmes; the lack of a policy on the reduction of the number of Roma children sent unjustly to institutions for children with disabilities; the lack of dialogue on the problems of the Macedonians; the impunity of racist talk in the media; the lack of a sufficient number of centres for people applying for refugee status; the inadequate persecution of racist actions by the police; and the lack of a system for collection of ethnic data.

ECRI recommended that Bulgaria should immediately ratify *Protocol 12 to the European Convention on Human Rights*, which protects against discrimination; to provide the Commissions for Protection Against Discrimination with sufficient human and financial resources; to not impede the freedom of association of any community; to effectively integrate the Roma children in the schools; to train the Electronic Media Council on fighting racism; to penalise politicians for hate speech; to prevent racial profiling and the excessive use of force by the police.

#### ***Discrimination on the grounds of age and political affiliation***

The CPAD convicted an employer for discrimination on the grounds of age in a competition. It accepted that the public announcement of the age restriction by itself constitutes discrimination. The body fined the company and instructed it to abstain from such violations in the future.

The CPAD established discrimination on the grounds of political affiliation with regard to the termination of a contract between commercial companies concerning the broadcasting of a cable TV program. The company providing the service refused to deliver because managers of the other company ran for elections on behalf of the Movement for Rights and Freedoms.

At the time when the CPAD has established itself as the most important body in the fight against inequality, in October 2009 the National Assembly did not approve the Commission's annual report. The members of parliament from GERB and Ataka called it "a weapon of the Movement for Rights and Freedoms" and raised the question whether such a body should even exist in Bulgaria.<sup>28</sup> Human rights non-governmental organisations expressed their support for the commission in a special declaration<sup>29</sup> and firmly opposed "any attempt to undermine the fight for equality by suppressing, restricting or destabilising the commission." Nevertheless, the political attack against the commission continued. At the end of October, the ministers of finance and of transport, information technology and communications included the commission in a report "Optimization of the Members of Independent Regulatory Bodies." The members of parliament proposed that the total number of CPAD commissioners be reduced from nine

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<sup>28</sup> For the transcripts of the National Assembly plenary sessions on October 21-22, 2009, see <http://www.parliament.bg/?page=plSt&lng=bg&SType=show&id=623> and <http://www.parliament.bg/?page=plSt&lng=bg&SType=show&id=624>.

<sup>29</sup> For more details, see <http://www.bghelsinki.org/index.php?module=news&lg=bg&id=2785>.

to five. It places different bodies in the same category of “regulatory bodies” and proposes a “single” and restrictive regulation for them. The report is not based on a study of the body’s capacity and does not take into consideration its contribution to non-discrimination and the public support to the commission. Human rights NGOs once again voiced their support for the CPAD in a protest letter to the prime minister.<sup>30</sup> They reiterated that Bulgaria is obliged under EU law to ensure the *effective* functioning of an *independent* equality body and that the public will bear huge financial losses, incomparable with the savings from the salaries of the four commissioners. In November 2009, the Council of Ministers approved the report and decided the legislative changes to be prepared by 15 December 2009. In a decision of 21 December 2009, the Council of Ministers extended the deadline to 15 February 2010, adding that the specific features of each regulatory body should be taken into account during the formulation of the legislative changes.

### 13. Right to asylum, freedom of movement

In 2009, the BHC continued its monitoring and advocacy activities with regard to the right to asylum and international protection for persons fleeing from persecution on the basis of their race, religion, nationality, affiliation with a specific social group or political conviction.

The right to asylum and protection in Bulgaria is regulated by Article 27, paras. 2 and 3 of the *Constitution*, the 1951 *UN Convention relating to the Status of Refugees* and the 1967 *UN Protocol Relating to the Status of Refugees*, as well as by the special *Asylum and Refugees Act (ARA)*. Under the national regulations, Bulgaria provides four forms of protection to foreigners who have fallen victims to persecution and violation of their basic rights: asylum, refugee status, humanitarian status and temporary protection.

The right to asylum is a statute regulated by Article 27, para. 2 in conjunction with Article 98, item 10 of the *Constitution*. Under these provisions, and under Article 7, para. 2 of *ARA*, it may be granted by the President of the Republic. The approach of the Asylum Board in the presidential administration, under which foreigners filing asylum applications are required to submit certified official documents issued by their countries of origin, in violation of all international standards for protection on in contradiction with the explicit legal prohibition in Article 63, para. 4 of *ARA*, was sustained. Given this extremely unlawful and inadequate approach of the president, comparable with the approach of an immigration body, as well as that since it was established with the 1991 *Constitution* this institution has never granted asylum, the existing constitutional opportunity to exercise the right of asylum in Bulgaria is considered formalistic and void of meaning.

Refugee status and humanitarian status are the forms of protection granted by a specialised administrative body, the State Agency for Refugees (SAR) of the Council of Ministers on the grounds of Article 27, para. 3 of the *Constitution*, Article 1A of the *Convention on the Status of Refugees* in conjunction with Article 8 of the *ARA* and Articles 2 and 3 of the *European Convention on Human Rights* in conjunction with Article 9 of the *ARA*. The difference between the two statuses is defined not only by the reasons for their granting, but also by the rights the foreigners with the respective status have. According

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<sup>30</sup> For more details, see <http://bghelsinki.org/index.php?module=news&id=2801>.

to Article 32 of the ARA, a foreigner who has been granted refugee status has the rights and the obligations of a Bulgarian citizen, with several explicit exceptions. Under Article 36 of ARA, foreigners who have been granted humanitarian status have the rights and obligations of permanently resident foreigners.

In 2009, this difference continued to be the reason behind the relatively low share of refugee status awards – 5.5% of all 835 protection applications filed, although there is an insignificant increase in its share compared to 2008 when only 3.6% of the applicants were granted such status. With regard to granting subsidiary protection (humanitarian status), however, the trend is reversed. Its share was 26% of all protection applications during the year, a reduction in comparison to the 35% recognition rate in 2008. Thus, the ration between the increase and the reduction of the recognition rating resulted in a total annual decrease from 39% in 2008 to 31% in 2009.

On the other hand, there is a slight improvement with regard to asylum seekers' right to access to territory and procedure. In 2009, the number of persons who were admitted in Bulgaria to file a protection application grew up to 832, a 12% increase over 2008 when their number was 746. Nevertheless, it should be noted that a series of legislative, institutional and practical barriers continued to impede the exercising of the right to access to territory, and especially to status granting procedures.

The border transit centre built by the Council of Ministers' State Agency for Refugees in the village of Pastrogor did not open in 2009. Thus, the asylum seekers who had filed their applications at the border were not granted immediate access to registration, identification and accommodation. With a non-functioning border transit centre, the capacity of accommodating asylum seekers at the two existing registration and admission centres (RAC) was severely restricted, resulting in the transportation of asylum seekers from the border and their involuntary accommodation at the special home for temporary accommodation of foreigners in Busmantsi, together with the other illegal immigrants. The duration of their detention at the institution, until their release and accommodation at RAC, varied between three weeks and six months, in violation of their right to liberty, the international standards on protection and the recommendations of the UN High Commissioner for Refugees. One such case constituted a blatant violation of the principle of non-refoulement under Article 33, para. 1 of the 1951 *Convention on the Status of Refugees* and Article 67 of the *Asylum and Refugees Act*. The asylum seeker, Turkish citizen Veisel Aktash, was deported by the Ministry of Interior Migration Directorate back to his country of origin, in contradiction with Bulgaria's international obligations in the field of asylum and refugees and the EU's *acquis communautaire*.

Freedom of movement, enshrined in Article 13 of the *Universal Declaration on Human Rights*, Article 12 of the *International Covenant on Civil and Political Rights* and Article 2 of Protocol 4 to the *European Convention on Human Rights*, is every person's right to move freely and to choose a domicile within the boundaries of any country, as well as the right to leave that country and to freely return to it. In Bulgaria's national legislation, this right is guaranteed in Article 35 in relation with Article 27, para. 1 and Article 26, para. 2 of the *Constitution*.

Significant progress was achieved in 2009 with regard to the defence of the right to freedom of movement of third country citizens by the transposition of Directive 2008/115/EC on common standards and procedures in Member States for returning

illegally staying third-country nationals. For the first time the national legislation introduces a deadline for the detention of illegally staying migrants at the special homes for accommodation of foreigners (SHAF), which are in essence administrative detention centres.

According to Article 44, para. 8 of the *Foreigners in the Republic of Bulgaria Act (FRBA)*, detention may not exceed six months; by exception, should the person refuse to cooperate with the competent authorities or there should there be a delay in obtaining the necessary documents, it may be extended by 12 months to a total of 18 months.

It should be noted, however, that several major deviations from the European standards were allowed in the transposition of the directive in the law. In violation of the directive, Article 44, para 8 of FRBA provides an opportunity to extend the detention by 12 months also for foreigners ordered to be deported as a threat to national security. Article 46a, para. 4 of FRBA gives courts the competence to “extend” the stay after the expiration of these deadlines, a direct violation of the final deadlines for the detention established by the directive.

Also, the law provides that the judicial control on administrative detention for the purposes of deportation or expulsion is compulsory only after the expiration of the deadlines under the directive. Thus, judicial control on the deprivation of liberty by an administrative measure imposed by a police order is not automatic and immediate, but is delayed in time by six months. Combined with the delayed ruling of the courts and the lack of obligation for the personal appearance of the detainee in court, this may lead to severe violations of the provisions of Article 5, item 4 of the European Convention on Human Rights on the timely appearance in court in case of deprivation of liberty. This approach to third country citizens is very discriminatory and inconsistent with both the due applicable human rights protection standards and with the already adopted in the national legislation and practice mechanisms for identical protection for the defendants in penal proceedings (Articles 63-65 of the *Code of Criminal Procedure*).

In July 2009, the ECtHR ruled on *Ignatov v. Bulgaria*. The court found a violation of the right to freedom of movement inconsistent with Article 2 of Protocol 4 to the *European Convention on Human Rights*. The applicant was imposed a measure, which prevented him from getting an international passport and travelling abroad due to incomplete civil proceedings initiated by a bank when he defaulted on a loan. Although the applicant repaid the loan several weeks after the prohibition was imposed, the measure remained in force two years after that. The ECtHR held that the prohibition to travel was extended unreasonably after the grounds for the measure have been eliminated.

#### **14. Discrimination against people with mental disabilities in institutions**

In 2008-2009, the BHC and the Bulgarian Institute for Relations between People (BIRP) conducted a monitoring of the conditions at the institutions for people with mental disabilities from the point of view of the opportunities for deinstitutionalization. The main deficiency of the system pointed out by the two organisations in their findings was the lack of a clear vision for systematic and harmonized policies for the deinstitutionalisation of social services. Although there were some steps towards a change, neither a “closure of the entrance” nor a “wide opening of the exit” of the institutions towards the

community was established. Institutionalised care remains a major feature of the services delivered to the people placed in all surveyed specialised institutions.

According to Ministry of Labour and Social Policy data, by the end of 2009 there were 43 specialised institutions for adults with mental disabilities, with a total capacity of 3,742 beds; of these 15 were institutions for adults with mental disabilities with a total capacity of 1,266 beds, and 28 were institutions for adults with developmental disabilities with a total capacity of 2,476 beds. One should also add the institutions for adults with dementia, which were not included in the monitoring.

The monitoring identified several key problems that hinder reform:

- The problem with the centralised administrative procedure of placement  
The existing centralised administrative procedure of placement in specialised institutions for adults with mental disabilities is an obstacle to the deinstitutionalisation of social services, as it creates conditions for arbitrary placement, which is in essence a deprivation of liberty and does not link local community needs to the existence of such institutions. Generally, the people with mental disabilities are placed in such institutions by the Social Assistance Agency in Sofia until the end of their lives, far away from their home towns, in municipalities, which are so small that they don't need such institutions.
- Problems with the funding and management of social services  
The dependency of the transformation on central budget financing is one of the greatest barriers to the enhancement of the social services. The current financial mechanism – single maintenance standards defined by the government on an annual basis – has an intrinsic contradiction faced by a series of public sectors, including the social sector: on the one hand, there is a need for effective management aimed at improving the quality of social care; on the other hand, the funding mechanisms preserve the status quo, as the funding is centralised, provided by formal criteria and independent of service quality. The remuneration of the specialists in the field of social services is among the lowest in the country, 350–390 BGN a month (180-200 EUR). The low remuneration for services provided by personal assistants – 240 BGN (123 BGN) – whom both users and experts regard as having the greatest social effect, hinders the development of alternatives. A 2009 example shows that out of 15 candidates for a position in the field of community social services in Smolyan, only five candidates remained when they found out what the remuneration was.
- Lack of control on social services  
The BHC found examples of violations of even the framework criteria and standards for social services to adults at the institutions for adults with mental disabilities and developmental disabilities: abuse of the interdiction and placement in a social institution measure, property fraud, and mock-up reforms. In such cases the BHC most often finds a formalistic control on behalf of the Social Assistance Agency's inspectors, whose checks don't go beyond the numbers and the exceeded fuel budget, abdication of mayors and the bodies responsible for guardianship and custody from the responsibility to exercise control on guardians' actions, lack of understanding by the prosecution of the graveness of the crimes against, and the abuse of, people with severe mental disabilities.

- Physical immobilization of people placed in social institutions and other types of inhuman treatment

The 2009 monitoring revealed examples of immobilisation and isolation of people placed in social institutions, in contradiction with the current legislation, which bans these practices in such institutions. At the institution in the village of Rovino, municipality of Smolyan, the BHC identified a practice that has been going on for years: 12 users were isolated as a punishment or “taming”, i.e. dealing with acute conditions at dark ground floors, premises under repair, a fenced and isolated court. The administration stated that the main reasons behind the isolations over the period from 1 February to 15 August 2008 were manifestations of aggression, psychomotor agitation, verbal aggression, pouring water on themselves. Four clients were most often accommodated in the isolation premises. This physical restriction was applied in total contradiction with the legislative provisions in the field of immobilization and isolation (not in a medical institution, without approval by a psychiatrist, without control and monitoring, more often during the night). Some cases of isolation were never recorded in the documentation.

At the institution for adults with mental disabilities in the village of Goren Chiflik, municipality of Dolen Chiflik, the monitors encountered a picturesque illustration of the “parallel worlds” in the system of care for people with disabilities. In the immediate proximity to the newly open modern protected home for eight of the institution’s clients and to the transitional space under construction, designed to accommodate 45 people, there is a one-storey housing pavilion – former mews and courtyard surrounded by a fence, with a metal door. This is the section for the people with the most severe disabilities in the institution and it stays locked throughout most of the day. During the first monitoring in the spring of 2009, the ongoing construction of the transitional space had resulted in the accommodation of 45 users in the section for people with severe conditions. Some of them slept on mattresses on the floor, others either lied or sat on the ground in the courtyard; they looked neglected and some of them were in affectus. In some premises there were traces of feces on the walls, the floors and the bed linen, with flies all over them. The judgment of the BHC and BIRP monitors was that five of the women needed to be urgently hospitalised. Prof. Toma Tomov, a long-time national mental health consultant and an expert in the project team, regarded their stay at the social home as a risk to their life. During the third monitoring on 4 August 2009, a partial change was registered: some of the female users were accommodated at the newly built pavilion. However, 25 users continued to live in “the horror corner.”

- Inadequate medicinal therapy

The problem of medicinal abuse and with the neglecting of the informed consent requirement with regard to the treatment of people with mental disabilities was observed in its most pure form at the institution for adults with mental disabilities in the village of Radovets, municipality of Topolovgrad. With one exception, all users at the institution were on the same medicine, haloperidol. The monitoring found out that the movements and the reactions of the people in the institution were visibly slower, their limbs were trembling and eating required great efforts.



Cases of inadequate medicinal therapy were also observed at the institution for adults with developmental disabilities in the village of Oborishte and the in the institution for adults with mental disabilities in the village of Pastra. At the Oborishte institution, region of Varna, the monitoring team observed users manifest serious side effects from their medicinal therapy – dyskinesia. The conversation with the treating physician made it clear that their daily dosage was much higher in order “to keep the aggressive impulses of some users under control.” The medical records revealed that the treatment had remained unchanged for years.

Heavy medication in order to contain aggression that goes on through the whole life is an unacceptable manifestation of inhuman keeping in “the cell of blurred conscience,” which impedes the ability of the affected persons to think and develop and leads to additional physical disabilities.

- Abuse of interdiction  
Monitoring data indicate that more than 80% of the people placed in institutions are incapacitated. In most cases they are under total legal incapacitation, which in reality means a civic death: inability of the person under guardianship to independently participate in civic life, as well as in any meaningful actions for his/her reintegration. Having people under guardianship is a widely used practice even at protected homes. In reality this means that the state is trying to “reintegrate” people deprived by law of the ability to make independent decisions, for whom the protected home is just a smaller and a better home. However, they have no opportunities to participate adequately in resocialisation activities.
- Institutionalisation of people whose identity is unknown  
At the institution for adults with developmental disabilities in the village of Tserova Koriya and at the institution in the village of Prisovo, region of Veliko Tarnovo, the monitors found cases of people placed by prosecutor’s order, without identity papers; given their condition, their identity cannot be established by verbal contact. These people were found helpless and placed in the closest institution under procedures unknown in our laws. In the case at Tserova Koriya, there is a file dating back to 1998; at the time of the BHC visit (March 2009) no result has been achieved. The Supreme Cassation Prosecutor’s Office was notified about these cases.
- Lack of judiciary control on placement in institutions  
Such control is necessary due to the fact the placement in a social institution for people with mental disabilities who have been placed under guardianship incapacitated constitutes a deprivation of liberty, as well as with regard to the widely used practice to institutionalise people who have been cheated and robbed by their relatives, using the institute of guardianship as a tool in support of such intentions. The lack of judicial control makes it possible to place people in the institutions without exploring any other opportunity for the provision of care for them within the community, only noting formally that such opportunities do not exist.

- Lack of education and work opportunities

Given the legal status of people under guardianship, a person placed in an institution doesn't have opportunities for education and work. The fact that the monitoring found that only one protected home provided mainstream education indicates the ineffectiveness of the legislation and the practice in the field of education for adults with mental disabilities. The same holds true for the right to work. The labour market is closed for the people under guardianship, as their will in signing any labour contract is considered null and void. The labour market is also closed for the people who are not under guardianship, but live in institutions, as institution managements are not interested in attracting employers to hire their clients. There is no regulation defining the meaning and the role of employment consultants and the programmes pertaining to the creation of adequate workplaces, with support to both the worker and the employer.

## 15. Women's rights and gender discrimination

The *Equality between Men and Women Bill* was approved for submission to parliament in early 2009. It includes the adoption of temporary special measures for equality between the sexes, the creation of a special body within the government, which will carry out on ongoing basis the policy on gender issues, the keeping of statistics by gender and other legislative measures aimed at contributing to policy institutionalisation. The bill was not voted due to the expiration of the 40<sup>th</sup> National Assembly's term. Without it, the implementation of the Strategy for Equality between Men and Women (2009-2015) and of the respective National Plan for 2009 was void of an implementation and monitoring mechanism. They were only formally reported at the meetings of the National Council on Equality, without any budget, analysis and monitoring of what is being done and what isn't.

The elections for European and national parliament in the summer of 2009 were held without a special legislation on encouraging women's involvement in politics and decision-making. As a result of the European Parliament's campaign in favour of a 50:50 representation of men and women at the European Parliament and of the mixed election system, Bulgaria ranked among the countries with the most encouraging results in terms of the share of women of their members of the European Parliament (45%). At the national parliamentary elections, however, the economic and party interests had a negative effect on equality. The share of the women in the 41<sup>st</sup> National Assembly is approximately 22% of all members of parliament. The women in government are only 17%. A positive development was the election for the first time of a woman, Tsetska Tsacheva, as chair of the National Assembly, while in November Yordanka Fandakova was elected as the first female mayor of Sofia.

In 2009, the *Labour Code* was amended to include paternity leave.<sup>31</sup> The *Protection Against Discrimination Act (PADA)* now includes guarantees for both the mother and the father with regard to the preservation of the workplace after leave and of the benefits arising from improvements in remuneration and working conditions effected during the leave. Legislative changes were adopted at the end of 2009 that guarantee the protection against discrimination on the labour market for female workers or employees

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<sup>31</sup> See Articles 13 and 14 of the *Protection Against Discrimination Act*.

in the advanced stages of assisted reproductive treatment (in vitro). Their rights were made consistent with those of the pregnant female workers and employees and breast-feeding mothers.

The struggle for gender equality and the necessity of changes and of more effective protection of women against discrimination were not reflected in CPAD case law in 2009. Its review indicates that the CPAD does not perform its statutory obligations to ensure effective proceedings in protecting plaintiffs' rights and to complete these proceedings within the statutory deadlines. In early 2009, the CPAD terminated file No. 26/2008 against the Ministry of Interior. In violation of PADA, it took the CPAD nine months to collect the documents for the file. The complaint was withdrawn. The review of file No. 217/2008 on the dissemination of alcohol advertisements, which are abusive to the women was also slow and showed a lack of understanding of the essence of gender discrimination. In 2008, the CPAD proceedings were terminated and the file was sent to the Commission for User Protection. In early 2009, the Supreme Administrative Court sent the file back for a decision. Five months passed before the hearing was held. As of February 2010, the case remained open.

The lack of understanding of gender equality is confirmed in another CPAD decision of 2009. File No. 191/2009 was initiated on the attribute of "personal status." The applicant, a mother of a 5-month-old baby, complained of the lack of a ramp on a staircase at a cashier's office for utility bills. In its decision No. 3/13.01.2009 CPAD found a violation of the prohibition of discrimination against people with disabilities and against people with baby strollers. However, the CPAD did not discuss the existence of gender discrimination, although the plaintiff had clearly stated that she had addressed the Commission in the capacity of a mother of an infant aged 5 months.

The changes to the *Protection Against Domestic Violence Act* (PADVA), which were prepared in 2008, were adopted by the 41<sup>st</sup> National Assembly and promulgated in the *State Gazette* of 22 December 2009. The campaign of the Alliance for Protection against Domestic Violence<sup>32</sup> contributed to this process. The changes improved the effectiveness of the protection against domestic violence: the circle of the protected persons was expanded; the emotional and economic violence was explicitly included in the notion of domestic violence; violence in the presence of a child is now regarded as emotional and psychological violence against the child; the duration of the protection by court order was extended from 3 to 18 months; the conditions for the initiation of proceedings by representatives of the Social Assistance Agency were enhanced. The new provisions on state support and funding for the implementation measures for PADVA are extremely important to the effectiveness of the protection: annual adoption of the governmental programme on the prevention and protection against domestic violence; as of 2010, annual allocation of budget funds by the Ministry of Justice for NGO projects for prevention and protection of victims of domestic violence. The amendment of Article 296 of the *Penal Code*, which explicitly criminalised the failure to comply with court protection orders, also contributed to the more effective protection against domestic violence.

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<sup>32</sup> The Alliance was established in August 2009 by the main organisations dealing with this issue: Animus Association Foundation, Demetra Association (Burgas), SOS – Families at Risk Association (Varna), Bulgarian Gender Research Foundation (Sofia, Plovdiv and Haskovo), NAYA Association (Targovishte), P.U.L.S. Foundation (Pernik), Ekaterina Karavelova Association (Silistra), Open Door Center (Pleven) and the Bulgarian Fund for Women.

In 2009, in the cities with active NGOs the courts issued the immediate protection orders on a timely basis and the police were quick to enforce them. According to Criminal Police Directorate-General data, the total number of the protection orders issued in the country between January and November 2009 was more than 1,000; most of them were issued in Plovdiv, Sofia, Haskovo, Burgas, Varna and Pernik. Of the victims of domestic violence 88% were women, 10% were children and 2% were men.

The new *Family Code* was adopted in June 2009 and entered in force on 1 October 2009. Two major novelties in the draft *Family Code* had the potential to influence positively gender equality: the legal recognition of cohabitation and the liberalisation of the property relations between spouses. The second solution was included to some extent in the final version of the *Family Code*: together with common ownership it is possible to have a division of ownership and a regime regulated by a prenuptial agreement. In terms of the legalisation of cohabitation and some consequences from them, however, the conservative attitude supported by the Bulgarian Orthodox Church prevailed and the 40<sup>th</sup> National Assembly left to society a still narrow understanding of family, inconsistent with social realities.

The progress in the creation of the national mechanism for direction of victims of trafficking was a major achievement in the field of human trafficking. The mechanism is being developed by the Animus Association Foundation and the National Commission for Combating Trafficking, in cooperation with other governmental and non-governmental organisations. The standard procedures and measures for the protection of the victims were developed in 2009, together with a concept for the interested institutions providing protection services to the victims. The mechanism will allow the victims of trafficking to be directed and supported in selecting an organisation or an institution to address for the provision of social services, legal and psychological advice, protection in the penal process, compensation, etc. The goal is to have the mechanism adopted and financially secured by the government in 2010.

The centralised collection of data and statistics on human trafficking initiated by the National Commission for Combating Trafficking shows progress in this field.

The data on the victims and the penal proceedings from January through August 2008, collected by the commission in October 2009, indicate that the women are most affected by trafficking and that the trafficking aimed at sexual exploitation occurs most often.<sup>33</sup> Positive amendments were introduced in the *Penal Code* in April 2009 by the creation of a new Article 154a, which criminalized sexual abuse and intercourse with a prostituting minor. Another new provision (Article 159c of the *Penal Code*) criminalises the use of a trafficking victim for profligate activities. These provisions are expected to influence positively the prevention and the protection of the women and the girls from sexual exploitation.

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<sup>33</sup> See the website of the National Commission for Combatting Trafficking:  
[http://antitraffic.government.bg/images/stories/story\\_files/1256303292.pdf](http://antitraffic.government.bg/images/stories/story_files/1256303292.pdf)

## 16. Rights of the child

### **Child protection**

In 2009, the new government headed by Boyko Borisov initiated a dialogue with several non-governmental organisations working in the field of child protection. The non-governmental organisations presented to the new government their requests for changes in the legislation and the policies on supporting the families, delivery of social services, inclusive education, youth justice and deinstitutionalization.<sup>34</sup> On 11 December 2009 the government and 23 child protection NGOs, held a meeting to develop a vision on the deinstitutionalisation of children in Bulgaria. Based on the vision, a plan will be developed in 2010 containing specific steps for genuine deinstitutionalisation of children, starting with the institutions for children with disabilities and the institutions for children aged 0 to 3. Meanwhile, the Council of Ministers adopted on 8 December 2009 a decision on the financial standards for the social and the educational institutions. This is a continuation of the previous government's policy with regard to the establishment of the institutional model of child care, insufficient financing for services in the community and insufficient support to the families in need.

### **Prevention of child abandonment**

In 2009, the government did not increase the child allowances and the family assistance so that parent wouldn't be forced to abandon their children for social and financial reasons. To the contrary, thousands of families were affected by the termination of the social benefits for at least one year, due to the 2006 changes to the *Social Assistance Act*. Under the *Child Protection Act*, the Ministry of Labour and Social Policy spent 6,000,000 BGN (3,076,923 EUR) in 2009 in the form of assistance and compensation under Programme 6 – Child Protection through the Transition from Institutional Care to Alternative Care in a Family Environment. The amount planned for 2010 is 7,400,000 BGN (3,794,871 EUR). Under Programme 9 – Support to Families with Children, the total amount of the monthly child benefits until the completion of secondary education under the *Family Allowances for Children Act* was 411,461,000 BGN (211,005,641 EUR) and in 2010 it will be 282,254,567 BGN (144,745,931 EUR) or some 130,000,000 BGN (66.66 mil EUR) less. The monthly allowances for a child until under the age of 1 were in the amount of 32,884,000 BGN (16,863,590 EUR) in 2009 and in 2010 they will be 20,385,000 BGN (10,453,846 EUR) or some BGN 12,500,000 (6.41 mil EUR) less. Under Programme 10 – Integration of People with Disabilities, the monthly allowances for children under the *Integration of People with Disabilities Act* totalled 40,320,000 BGN (20,676,923 EUR) in 2009 and in 2010 they will be 27,397,440 (14.05 mil EUR) or some BGN 13,000,000 (6.66 mil EUR) less. The funding of the last two programmes has been reduced by one third. This means that children under 1 and children with disabilities will suffer the most from the 2010 budget restrictions.

In terms of community-based social services, in 2009 the state financial support standards per child were the highest for the family type accommodation centers (4,000

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<sup>34</sup> The NGO Alliance vision on child care reform is available at: <http://www.bghelsinki.org/index.php?module=news&lg=bg&id=1016>. The proposals on the implementation of the NGO Alliance vision on child care reform are available at: <http://www.bghelsinki.org/index.php?module=news&lg=bg&id=1397>.

EUR), the crises centres for children victims of violence (3,975 EUR) and the Mother and Baby units (3,518 EUR). The capacity of most services increased much slower than the growing needs of the children and the families, while the 2010 financial standards for all these services were reduced by some 256 EUR each. It's obvious that the families and the children cannot compensate their deficiencies with these funds and with underdeveloped (with insufficient capacity and without being based on need regional needs) and low quality services in the community, and the children cannot be effectively protected from poverty, social exclusion and violence.

### ***Access to education for children with disabilities at institutions for children with disabilities***

With regard to the 2008 decision of the European Committee on Social Rights against Bulgaria, concerning the failure to provide education to the children placed in institutions for children with mental disabilities,<sup>35</sup> the Bulgarian Helsinki Committee and the MDAC once again organized (a year later) a roundtable with the participation of all key ministries and non-governmental organisations. The purpose was to remind the new government about this commitment. Once again it turned out that there is no clear plan on how to deliver on the obligation to provide education to children with mental disabilities. Data from the State Agency for Child Protection (SACP), provided on request by BHC in February 2009, indicate that the children with mental disabilities placed in 23 homes are being educated and trained. In April 2009, BHC asked randomly selected institutions what was the number of children who were receiving education and what type of education/training they were receiving. It turned out that the share of the children who were receiving education in the institutions for children with mental disabilities varies between 17% and 32%. The children studying at mainstream schools were only 9.9%. At a conference held by BHC on 3 November 2009, the new chair of the SACP and the new minister of education explained that there are great differences in the data available at the two institutions on the number of children at institutions who are getting education.

### ***Inclusive education***

*Ordinance 1 on the Training of Children and Students with Special Educational Needs* was adopted in January 2009. The ordinance was developed in 2007 and 2008 by a workgroup of the Ministry of Education with the participation of non-governmental organisations. The ordinance acknowledges the need to ensure psychological and teaching assistance to the children with special needs, defines the training at special schools as acceptable only "when all opportunities for integrated training have been explored," allows plenty of opportunities to include different specialties in the training and introduces data collection and statistics. However, the ordinance does not provide a definition of the term "opportunities for integrated training," does not include special programmes and teaching aids for the training of children with mental or multiple disabilities, and does not regulate in detail a mechanism for the collection and processing of data on the children with special needs that would guarantee adequate planning and provision of resources for their training.

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<sup>35</sup> For more details, see *Human Rights in Bulgaria in 2008*, Annual Report of the Bulgarian Helsinki Committee, March 2009.

The expert committees of the regional inspectorates on education once again are not obligated to evaluate periodically the educational needs of the children, which makes it difficult for the education to meet their real individual needs. The parents' choice to have their child attend a mainstream school may be reduced to an unreasonable minimum, due to the fact that few schools have sufficient resources; they are not publicly known and there is no guarantee that their resources will be sufficient to accommodate an unlimited number of children. The ordinance does not create any new provisions on the vocational training of children with mental disabilities that would make children's capabilities consistent with labour market needs. Again, this dooms even the children who have completed vocational education to unemployment and social isolation. The children from homes for children with mental disabilities are discriminated in the ordinance, which stipulates that they should only study at special schools. The ordinance doesn't have a section defining the supporting environment parameters with regard to the children with mental disabilities. It doesn't provide a real opportunity for vocational training or a description of the resource support activities aimed at children and students with mental disabilities, which cannot be carried out by the special schools.

Bulgaria still doesn't have a database on all children with special educational needs. As long as there is no such database and the data in it couldn't be compared to the data in the SACP and the Ministry of Labour and Social Policy, there could be no reliable picture of the provision of education to children with disabilities according to their individual needs. Nor can the quality of such education be evaluated. In December 2009, the Council of Ministers decided to allocate for the first time 194 BGN (99 EUR) per child with a disability involved in integrated training at a mainstream school with resource support.

### ***Social services for children in institutions - deinstitutionalization***

The notorious institution for children with disabilities in the village of Mogilino was finally closed in 2009. Out of the planned six small houses for the children from Mogilino, one (for six children) began to function in October 2008 in Ruse, with insufficient funding, while another one was opened in Ruse in September 2009, at the Home for Medical and Social Care for Children Aged 0 to 3. The third house was built in Varna and was ready for use by September 2009. The closure of the institution for children with disabilities in the village of Gorna Koznitsa, carried out mainly by the Cedar Foundation and the municipalities of Bobov Dol and Kyustendil, was announced in September 2009. The closure was once again accompanied by many problems at the state level. Unfortunately, the public discussion of the problems faced by the children with disabilities placed in institutions did not result in the formulation of a clear, coordinated, long-term governmental policy. The media showed many cases of death, physical and sexual violence against children at the institutions. Nevertheless, the Bulgarian prosecution – asked by the Bulgarian Helsinki Committee to inspect all institutions for children with disabilities, failed to find any evidence of crimes against children. In this connection, in September, the Bulgarian Helsinki Committee filed a discrimination lawsuit against the prosecution.

### ***Reform of the social homes for children***

The lack of clarity on reforming and restructuring the homes for children continued in 2009. The annual state subsistence for children in institutions for children deprived of

parental care and aged 7 through 18 – which was increased by 50% in 2008 – was additionally increased by some 750 BGN (385 EUR) per child in 2009; in the institutions for children with disabilities it was increased by some 800 BGN (410 EUR) per child. This trend has not been preserved in 2010 and the financial standards have been reduced to those in 2008.<sup>36</sup> Surprisingly, however, the standards for the special educational boarding institutions (for children with mental disabilities), SBS and CBS were increased in 2009; for the latter, the standard was 8,837 BGN (4,532 EUR) in 2009 and 9,220 BGN (4,728 EUR) in 2010. The state support to the institutions for children is evident, regardless of the common understanding that they have a negative effect on children’s physical, mental and emotional development. There is still no common political will to close the children’s institutions and to develop services and forms of support to the families.

The government has still not established a mechanism for reliable reporting of the number of children (with their individual characteristics) who use institutional services in homes or in boarding-house schools, but continues to finance under a single state financial standard all children’s institutions in the country, while for the institutions for medical and social care (subordinated to the Ministry of Health) such a standard still does not exist. Also, the government does not track how many children are placed and how many leave the childcare institutions every year, in order to measure the real deinstitutionalization. Collecting and comparing information from the various departments responsible for the children in institutions is extremely difficult due to the non-transparent and varying approaches that they use to report their activities, therefore leading to contradictory conclusions.

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<sup>36</sup> Council of Ministers decision No. 937 of 8.12. 2009 on the distribution of the activities financed by the municipal budgets in local activities and activities delegated by the state to identify funding standards for the activities delegated by the state in 2010, Appendix 5 to Item 4, available at: [http://www.mon.bg/opencms/export/sites/mon/left\\_menu/budget/reshenieMS937\\_8-12-2009\\_pril5.pdf](http://www.mon.bg/opencms/export/sites/mon/left_menu/budget/reshenieMS937_8-12-2009_pril5.pdf).