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HUMAN RIGHTS IN BULGARIA IN 2007

Annual Report of the Bulgarian Helsinki Committee

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INTRODUCTION

In 2007, Bulgaria's first year as an EU member-state, the country was governed by the coalition government of the Bulgarian Socialist Party (BSP), the National Movement Simeon II (NMSS) and the Movement for Rights and Freedoms (MRF). In June 2007, the European Commission published a report on the follow-up measures after the accession. The report, however, paid no attention to human rights. Human rights were not among the areas that the Commission continued to monitor. In reality, human rights continued to be a problem in many areas, and the termination of the European Commission monitoring reduced the chances for legislative and judicial reform. This was also one of the reasons behind the cynical attitude towards human rights issues, as expressed on different occasions during the year by some governmental and judiciary institutions, as well as by public circles.

The activities of the national human rights protection institutions, the Ombudsman and the Commission for Protection from Discrimination, contributed to the improvement of the public profile of human rights and to protection from discrimination in some areas. However, these activities were plagued by significant deficiencies. Bulgaria's cooperation with international human rights bodies, more specifically within the United Nations, continued to be deplorable. Bulgaria retained its place as the country with the greatest number of delayed reports to different UN bodies among the Council of Europe member-states. In 2007, the country made no effort to compensate this delay.

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HUMAN RIGHTS IN BULGARIA IN 2007

1. Right to Life

The right to life continued to be badly protected in Bulgaria in 2007, due to inadequate legislative guarantees and law enforcement. Article 74 of the *Ministry of Interior Act* allows the use of firearms during the arrest of an individual who is committing or has committed even a petty crime, or to prevent the flight of a person detained for even a petty crime. This provision is inconsistent with principle 9 of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. The investigations of cases in which excessive use of physical force by law enforcement officials has resulted in loss of life were not always effective and impartial, and on several occasions in the course of the year resulted in impunity of police officers.

In late 2007 and early 2008, the BHC updated its information on instances of use of physical force and firearms that were included in previous reports of the organisation.[1]

In July, the Plovdiv Regional Court dismissed the claim for non-material damages filed by the mother of Kiril Stoyanov, shot and killed by a police officer in Plovdiv in 2004. The court judged that there had been no wrongdoing. The verdict was appealed and is pending decision by the appellate court.

On January 9 2008, the Sofia Military Regional Prosecutor's Office, for the fifth consecutive time, terminated the penal proceedings against the police officer accused of killing Boris Mihaylov in 2004 under circumstances exceeding the limits of inevitable self-defence. The Sofia Military Court is to rule for the fifth time on this case, having repealed the termination and having instructed investigation four times since 2004. In its motives in June, the court stated[2]: "A parody of an inquisitorial procedure was conducted, as for example the so-called line-ups between witnesses … and the so-called crime-scene reconstruction […] Attaching the said sheets to the investigative case – in reality, blank forms signed by the individuals – is a severe demonstration of the investigating authorities' unwillingness to perform their duties with regard to the collection of evidence […] In essence, none of the court's obligatory written instructions, as stipulated in three consecutive rulings that are compulsory for the prosecutor, have been implemented."

On February 23 2007, the Military Court of Appeals confirmed the verdict of the Plovdiv Military Court in its penal section, which ruled effective incarceration on the case for the murder of Ivelin Veselinov in 2005. Police officer P. V. and the other two men who had beaten Veselinov to death were convicted to 12, ten and six years in prison, respectively. The judges from the Military Court of Appeals confirmed the ruling of the first-instance court that this case should not be subject to Art. 124 of the Penal Code (premeditated grave bodily injury resulting in manslaughter), but to Art. 116 (premeditated murder). "The severe beating of a helpless person […] manifests intent to cause death and not battery. With regard to the perpetrator's liability for premeditated murder, it is irrelevant whether the death has resulted from the injuries inflicted or the complications thereof." The Court of Appeals increased the amount of the compensation for non-pecuniary damages to Veselinov's parents to BGN 25,000 (12,500 Euro) for each of them. The verdict was confirmed by the Supreme Court of Cassation on June 4 2007.

In the case on the death of Marko Bonchev in August 2006, caused after being detained by the police, the Military Appellate Prosecutor´s Office, in a December 19 2007 decree, returned the case to the Plovdiv Military Regional Prosecutor's Office with instructions to carry out an effective investigation of the causes behind Bonchev´s death. In its reasons, the Military Appellate Prosecutor's Office wrote: "According to the case law of the European Court of Human Rights, when a person arguably claims that (s)he has been ill-treated in violation of Art. 3 of the European Convention on Human Rights, this stipulation, read in conjunction with Art. 1, implies and requires an obligation for an effective official investigation." On February 15 2007, the Stara Zagora Regional Prosecutor's Office terminated the criminal proceedings against the doctors who had treated Bonchev prior to his death. On June 21 2007, the Stara Zagora Regional Court confirmed the termination. The

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[1] *See* Human Rights in Bulgaria in 2004, *Annual Report of the Bulgarian Helsinki Committee, March 2005;* Human Rights in Bulgaria in 2005, *Annual Report of the Bulgarian Helsinki Committee, March 2006;* Human Rights in Bulgaria in 2006, *Annual Report of the Bulgarian Helsinki Committee, March 2007, available on www.bghelsinki.org.*

[2] *Decision No P-102 of the Sofia Military Court of June 27 2007, on private criminal case no. P 102/2007.*

decision was appealed to the Plovdiv Court of Appeals and was still pending by year's end.

On November 9 2007, the Sofia Military Regional Court ruled on the notorious case of the murder in December 2005 by police officers of Angel "Chorata" Dimitrov. Five police officers were sentenced to a total of 91 years in prison. The team leader of the Blagoevgrad Regional Organized Crime Unit, M. P., was sentenced to 19 years in prison, while each of the other four officers was sentenced to 18 years. They, and the Blagoevgrad Regional Police Directorate, were sentenced to pay Dimitrov's family compensations in the amount of BGN 180,000 (90,000 Euro). Soon after the announcement of the ruling, several non-governmental organisations and media initiated a campaign against the verdict, and Dimitrov's relatives complained of police-provoked harassment against their businesses. On February 20 2008, the Military Court of Appeals repealed the verdict and returned the case for a new hearing by the court of first instance.

On August 10 2007 Valentin Zhivkov Angelov, a Romani man from Strazhitsa, died under suspicious circumstances while in detention at the Balchik Police Directorate. According to the established facts and statements of his relatives, he was under the influence of alcohol and was being driven home by his brother. The vehicle was stopped by a police patrol and Valentin Angelov was detained without legal justification and taken to Balchik. The next day his family found that he had died from massive bleeding from a neck wound. The two glass doors at the police station were broken and police officers claimed that the victim lunged against the doors three times and that his movements were uncoordinated because of the handcuffs and the effects of alcohol. The two officers immediately at the side of the detained claim to have been unable to restrain him, and that at his third lunge at the glass doors glass pieces fell and cut his neck. The paramedics were unable to save his life. His death was established at the St. Anna Hospital in Varna. The Varna Military Regional Prosecutor's Office initiated pre-trial proceedings to establish the cause for Valentin Angelov's death. The proceedings were terminated by decree on November 30 2007 stating that "the act d[id] not constitute a crime". The decree was appealed to the Varna Military Appellate Prosecutor. The decision is still pending.

On July 16 the security at the Help Night Club in the Black Sea resort Nesebar publicly beat to death the Swedish tourist Barzan Arif. The murder was filmed by a witness and broadcast by a TV channel. The video clearly shows police officers standing by and watching calmly as one of the security guards is jumping on Arif's limp body. The autopsy results revealed that his death was caused by chest and abdominal injuries. Penal proceedings were initiated against one of the security guards, for negligent homicide. One of the officers who had witnessed the incident was dismissed, and another was reprimanded. The Sliven Military Prosecutor's Office initiated proceedings immediately after the broadcast and began penal proceedings against one of the police officers, on counts of misdemeanor in office. By early March 2008, the indictment was not filed in court.

On December 20 2007, the European Court of Human Rights (ECtHR) in Strasbourg issued its judgement in the case of *Nikolova and Velichkova v. Bulgaria*. The Court ruled that there had been a violation of the right to life (Art. 2) of the European Convention on Human Rights (ECHR). The case concerned the death of Atanas Nikolov, who died when two police officers beat him on the head and the body while detaining him. He was taken to a hospital where he later died from brain injury. A lawsuit was filed against the officers in Bulgaria, which ended with a probationary sentence of three years imprisonment. Despite this verdict, however, the ECtHR ruled that since the officers were sentenced seven years after the crime had been committed, the verdict was minimal and the officers continued to work for the police (one of them was even promoted), the response of the Bulgarian authorities to such a severe crime could not be deemed adequate. The Court stressed that the authorities' behaviour has maintained a sense of impunity and lack of guilt on behalf of the officers.

On July 26 2007, the ECtHR ruled on another case where it found a violation of the right to life, *Angelova and Iliev v. Bulgaria*. The case concerns the death of Angel Dimitrov, who was attacked by seven teenagers, severely beaten and stabbed. He was later taken to a hospital where he died. The investigation found that the attackers had been motivated by the fact that Dimitrov was of Romani origin. After almost 11 years of investigation, the prosecutor rejected many of the accusations as the statute of limitations had expired. The ECtHR ruled that the state has failed to provide a convincing explanation for the excessive duration of the investigation, which has resulted in the impossibility to have the assailants tried on many of the accusations. The state bodies have thus failed to perform their obligations for an adequate and effective investigation of the incident. The Court also established a violation of the prohibition of discrimination (Art. 14). The ECtHR held that the failure of the authorities to conduct an investigation in a timely manner was completely unacceptable, in spite of the fact that the authorities were aware from the very beginning that this was a racially motivated attack. The Court pointed out that the state had to constantly promote the need for public condemnation of racism and maintain minorities' trust in its ability to protect them from racial violence.

2. Protection from Torture, Inhuman and Degrading Treatment or Punishment

Despite the 2004 recommendations of the UN Committee Against Torture[3], the Bulgarian Penal Code does not contain a specific provision penalizing torture. In 2007, the BHC received many reliable complaints from people who claimed they had been ill-treated by police officers at the time of arrest or while in detention. Many police officers responsible for these acts remained unpunished.

As in previous years, in November-December 2007 BHC researchers interviewed 140 inmates in four prisons (Plovdiv, Pleven, Belene and Bobovdol) on the circumstances of their detention and preliminary investigation. The survey is representative for the four prisons, but not for the penitentiary systems as a whole. It covered convicted prisoners with effective sentences whose pretrial proceedings were initiated after January 1 2006. The table below shows the results, in comparison to previous two surveys at the same prisons.

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

	2005	2006	2007
At the time of arrest	23.2	20.1	17.1
At the police station	23.2	20.8	22.9

As can be seen from the table, the situation has not changed much. The share of prisoners complaining of ill-treatment at the time of arrest has dropped with 3%. At the same time, the share of those who complain of ill-treatment at the police stations had increased by 2%. For the third consecutive year, this indicates stagnation following the progressive reduction of complaints that began in 2000.

The 2006 massive police raids in Roma neighbourhoods[4], marked by excessive use of force and restraining means, were never investigated. No police officers were punished. Some cases were not even verified. On March 21 2007, the Sofia Military Prosecutor's Office refused to initiate criminal proceedings with regard to the raid in the Roma section of the Philipovtsi neighbourhood in Sofia, which according to the local residents occurred during a police operation on August 24 2006. The refusal was confirmed by the Military Appellate Prosecutor's Office. The disciplinary proceedings initiated by the Sofia Police Directorate were closed on March 6 2006, with the finding that no disciplinary sanctions were necessary.

In a much discussed decision, on 15 March 2007 the Supreme Court of Cassation (SCC) upheld the acquittal by the Sofia Court of Appeals of several persons accused of the 1996 killing of the former Bulgarian prime-minister Andrey Lukanov. The SCC ruled that "it was not without justification that lower courts have accepted that immediately after their detention, Kichatov, Georgiev and Lenev were subjected to physical violence, obviously aimed at exercising psychological influence in order to force a confession. In this respect, the vocal evidence is not isolated, but has been confirmed by medical documents and by the conclusions of the Court's medical assessors." One of the defendants, Yurii Lenev, was illegally detained in 1999 at a safehouse of the Ministry of Interior in Koprivshtitsa, popularly known as the "Horror House". Police officers beat him on the way to Koprivshtitsa. At the house, he was tortured for answers to questions on persons suspected in being involved in Andrey Lukanov's killing. During his detention at the house, reconnaissance means were illegally used against him. After his transfer to investigation detention, his was checked by a doctor who found "multiple haematoma on the armpits, forearms and wrists of both hands, cuts on the left wrist and on the second finger of the left hand, haematoma on the left thigh and on both ankles, haematoma on the left hip."

In 2000, the police officers who had tortured Lenev were accused of inflicting light bodily injury. On October 30 2006, they were acquitted by the Sofia Military Regional Court (SMRC) on the grounds that they had acted within the law and had not exceeded their powers. Following a private complaint by Lenev and a protest by the prosecution, the Military Court of Appeals confirmed the SMDC ruling on the grounds of statute of limitations expiry.

In another widely publicized case, on May 17 police officers assaulted a journalist from the *Express* newspaper. Five days later, the Sofia Military Regional Prosecutor's Office refused to initiate pre-trial proceedings against the policemen.

On several occasions in 2007 police officers used excessive force in massive operations against groups of people. In February, several participants in environmental protests in downtown Sofia, including women, were assaulted and insulted by the police sent to deal with the protest.[5] In early July, police officers beat a mine worker during a protest on the international road at the Maritsa East compound. In mid-July, the police in Veliko Turnovo

[3] *See* Human Rights in Bulgaria in 2004, *Annual Report of the Bulgarian Helsinki Committee, March, 2005.*

[4] *See* Human Rights in Bulgaria in 2006, *Annual Report of the Bulgarian Helsinki Committee, March 2007.*

[5] *See* **Freedom of Association and Peaceful Assembly** *below.*

staged a massive assault against Roma in a Roma neighbourhood.[6]

In 2007, the European Court of Human Rights in Strasbourg issued several decisions against Bulgaria for violations of the prohibition of inhuman and degrading treatment (Article 3 ECHR). On June 28 2007, the Court announced its judgement in *Malechkov v. Bulgaria*. The Court established a violation of Article 3 with regard to the conditions of the applicant's detention at the Pazardzhik investigation detention centre in 1998. The applicant was held alone in a cell for more than four months, in 24-hour isolation, without access to fresh air and natural light and with the light constantly on. He was not allowed to perform any physical exercises. The Court held that, given the lack of specific reasons for high security measures against the applicant, the severe security regime, in combination with the inadequate physical conditions, was unjustified and represented degrading treatment.

On April 5 2007, the ECtHR ruled on a similar case, *Todor Todorov v. Bulgaria*. This case, too, concerned the conditions in the Pazardzhik investigation detention centre and the Pazardzhik prison. The applicant spent five months in the Pazardzhik investigation detention centre, in a cell without fresh air and with a non-functioning ventilation system, barely lit by artificial light. He had no opportunity to engage in any physical exercises or other open-air activities, and open-air walks were not always permitted. In reality, he spent the whole time in his cell, going briefly out only two or three times a day to use the bathroom. The rest of the time, he had to use a bucket in the cell, in the presence of the other inmates. The food, of bad quality and insufficient quantity, was served without tableware, so the inmates had to use their fingers. The Court held that these conditions, combined with the long duration of the detention, constituted inhuman and degrading treatment. In prison, the applicant shared a 15 m^2 cell with another five inmates. The Court held that these conditions were inconsistent with the standards adopted by the Committee for the Prevention of Torture. Under these standards, the minimum space in a cell for more than one person is 4 m^2 per person, while in the applicant's case each inmate had only 2.5 m^2.

On April 12 2007, the ECtHR issued its judgement on the case of *Ivan Vasilev v. Bulgaria*, in which the applicant complained of unlawful actions by the police. The applicant, who was 14 at the time, was chased by two police trainees who had mistakenly taken him for a vandalism suspect. At the time of detention, the police hit him in the body. Soon after the incident, the applicant was hospitalized with kidney pain. Three months later he went through surgery, in which one of his kidneys was removed. The two police officers were tried and convicted. However, the Supreme Court of Cassation repealed the sentence, on the grounds that the use of force by the police was justified. The ECtHR held that in this case the use of force was excessive both in terms of intensity and duration, and therefore constituted a violation by the authorities of the prohibition of inhuman and degrading treatment. The Court also held that the Supreme Court of Cassation was too formalistic in examining the issues of the force used by the police, and that it has been too restrictive in applying the local legislation regulating the use of force for detention. The ECtHR stressed that the Supreme Court had no examined the intensity of the force used and had not analyzed whether it was necessary and proportionate given the circumstances. Such an approach is contradictory to the standards developed in the ECtHR case law. The Court ruled that the applicant had no effective means of protecting himself, and therefore Art. 13 of the European Convention on Human Rights was also breached.

On January 18 2007, the ECtHR ruled on yet another case of unlawful action on behalf of the police. In *Rashid v. Bulgaria*, the applicant complained he had been subjected to police violence at the time of arrest. The Court held that, given the number and the intensity of the injuries inflicted, as well as the lack of evidence that the applicant had provoked the arresting officers in any way, the force used for detention had not been "absolutely necessary". It therefore held that the prohibition for inhuman treatment had been violated. The Court also pointed out the Ministry of Interior's persistent refusal to divulge the identity of the police officers involved in the arrest, due to which the military court had terminated the proceedings on the sole grounds of lack of information on the officers' identity. As the investigation was not effective, the Court also held a violation of Art. 13 of the European Convention on Human Rights.

On September 27 2007, the ECtHR found a violation of the prohibition of inhuman treatment with regard to a case of inadequate investigation of violence and threats by private persons against the applicant. In *Nikolai Dimitrov v. Bulgaria*, the applicant submitted to the Prosecutor's Office a complaint against the threats received and the violence suffered, accompanied by medical documents. The Prosecutor's Office began an investigation, which was later terminated for lack of data that the alleged crimes had occurred, and because the applicant had withdrawn his complaint. The applicant had informed the Prosecutor's Office that he had withdrawn his complaint under threat. The Court held that the state had failed to perform its obligation to conduct an effective investigation of the complaint, that the authorities had never mentioned and discussed the medical documents confirming the inflicted injuries, and had made a decision based most of all on the withdrawal of the com-

[6] *See* Drom Dromendar *newspaper, August 2007.*

plaint, without considering the applicant's statement that he was being threatened.

3. Right to Liberty and Security of Person

No amendments in legislation and law enforcement were effected in 2007 to better guarantee the protection against arbitrary deprivation of liberty. The placement in social homes for people with mental disabilities continued to be a serious problem. Such placement occurs under an administrative procedure, without control by the court and, as often noted by the BHC monitoring, is often arbitrary[7]. The legislation governing placement remained unchanged during the year.

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 in the procedure. In violation of the international standards, the placement in homes for temporary (up to two months) placement of minors and juveniles continued to occur as an administrative procedure, without control from the courts.

The detention under administrative procedures of foreigners for extradition continued to be a serious problem in 2007. The statutory procedure and the law enforcement continued to allow arbitrary and lengthy detention, combined with a lack of effective opportunity for appeal before a court[8].

In 2007, the European Court of Human Right once again ruled on a significant number of cases against Bulgaria for violations of the right to liberty and security of person. In six different cases, the Court found a violation of different aspects of Article 5 of the ECHR. Some of these cases pre-dated the penal process reform, which was effected in early 2000, and concerned powers of the prosecution and the investigation that were eliminated by the reform. In other decisions, the violation was due to the excessive duration of the detention. In some decisions, the Court held violations due to the formalistic judgement of the courts of the grounds to extend the detention. The courts often decided purely on the basis of the severity of the charges or never presented any evidence in support of the danger of the detained to escape, commit a crime or obstruct the investigation. In the above-mentioned case *Rashid v. Bulgaria*, the Court found a violation of Art. 5 as the applicant was released from the detention center 23 hours after proof for payment of the bail had been submitted, because the officer on duty was absent when the lawyer came in with the documents.

4. Fair Trial

In 2007, the Bulgarian judiciary system continued to manifest its structural deficiencies, such as the excessive duration of civil and criminal proceedings, the restricted access to the courts for some categories of individuals, the lack of judiciary control on administrative acts, the lack of guarantees for effective prosecution of certain crimes against the person, and the ineffectiveness of the executory proceedings.

In 2007, the access to courts continued to be restricted for foreigners deprived of liberty not because they were sentenced or indicted, but because they were awaiting deportation. When "deportation" or "transfer to the border" is imposed, the Foreigners Act allows the police, at its own discretion, to detain the foreigner at detention centres (special homes for temporary placement of alien residents). More often than not, the Ministry of Interior fails to implement the enforcement measure within a reasonable time and the detained persons are deprived of liberty for extended periods of time, sometimes exceeding a year or two years. Many detainees appeal the lawfulness of their detention before a court; they often win and the court orders their release. Unfortunately, their access to the courts is restricted due to the following practices:

- The police rarely give detainees a copy of the extradition order or the order for involuntary placement in a special home.
- Many orders are unmotivated.
- The orders are not always accompanied by a translation in the alien's language of the order's content and of the detainees' rights[9].
- No legal assistance is provided to the detainees. The foreigners usually hire a lawyer at their own expense, or get assistance through non-governmental organisations.
- At first instance, the review of detainees' complaints takes a year or more. This is in violation of Art. 5, p. 4 of the European Convention on Human Rights on the requirement for access to the courts to review the lawfulness of the detention. It is also a violation of the Ministry of Interior Act, which requires to court to issue a judgement "immediately".

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[7] *See* Human Rights in Bulgaria in 2006, *Annual Report of the Bulgarian Helsinki Committee, March 2007.*

[8] *See* **Fair Trial** *below.*

[9] *The court has on multiple occasions held the first three practices unlawful in cases against involuntary placement and deportation. Nevertheless, in 2007 the Ministry of Interior continued to use these practices, with only a minor improvement.*

· Even with a court decision repealing the detention and ordering immediate release, the Ministry of Interior continues to detain the aliens for extended periods of time. In 2007, the number of such cases was lower compared to preceding years.

At its last 2007 session, the Committee of Ministers of the Council of Europe pointed out some structural problems of the Bulgarian judiciary, identified in decisions of the European Court of Human Rights as sources of human rights violations in the country. Overcoming them is a part of the application of the respective ECtHR decisions by the state. These problems include:

· The lack of a statutory suspension effect of the complaint against extradition, revocation of residence permission and prohibition to enter the country, when these measures are imposed on national security grounds. According to the current legislation, a complaint against such measures does not suspend their action. Given the duration of the proceedings on such complaints (on the average, it takes two years for the court to make a decision), the lack of suspension effect constitutes in reality a disproportional restriction of the right of the affected individuals to defend themselves. They have to spend years outside the country, waiting for the court to decide, which is a possible severe intrusion in their personal and family life. Such intrusion would be disproportional, should the court eventually repeal the appealed measure as unlawful. This problem needs to be solved, in order to provide for the enforcement of the ECtHR rulings against Bulgaria on the cases *Al-Nashif v. Bulgaria* (2002) and *Musa v. Bulgaria* (2007).

· The lack of guarantees for effective prosecution of rape. The ECtHR decision on *M. C. v. Bulgaria* proclaimed that the prosecution's practices with regard to such crimes are inadequate, as it prosecutes effectively only rapes in which the victim has fought back, disregarding the psychological reaction of paralysis due to the shock from the violence that most often occurs with rape victims, especially children and young people. In the practice of the Bulgarian investigating bodies and prosecution, rape victims that have experienced such paralysis and have therefore been unable to fight their rapists, are deprived of protection. The government has done nothing to change this vicious practice that punishes the victims and benefits the rapists. The Ministry of Justice is not planning to amend the Penal Code so as to explicitly oblige the magistrates to effectively prosecute all rape cases, regardless of whether the victim has fought back. The Ministry only plans to send instructions to the investigating bodies and the prosecution; so far, these instructions have not been formulated. No measures are foreseen to guarantee that the judges try rapists on the basis of only the lack of consent on behalf of the victim, without consideration of the physical resistance.

· The lack of guarantees for effective prosecution and punishment of racially motivated crimes. In its judgement on *Nachova v. Bulgaria*, the ECtHR explicitly established that, despite the serious indications of racial motivation, the authorities had done nothing to investigate whether the murder of the victims by a military police officer was influenced by racial hostility. Due to this failure, the ECtHR found that Bulgaria had violated its obligation to effectively investigate discriminatory killings and other crimes. Apart from sending a memo on the ECtHR decision and instructions to some bodies, the government did nothing to enforce the sentence. These measures cannot ensure a compulsory new judicial practice that would consider the racial intent in crimes and prosecute it adequately.

· The disproportionally unfavourable to the plaintiffs statutory regulation of civil lawsuit filing fees. Under the State Fees Act, plaintiffs owe the court a fee in the amount of 4% of the value of their claim. Should the court rule in favour of the plaintiff only partially, the latter owes this fee plus court expenses to the other party proportional to the rejected part of the claim. In its judgement on *Stankov v. Bulgaria* (2007), the ECtHR ruled that this situation is a source of violation of the right to access to court[10]. The plaintiff in this case was sentenced to pay the state a fee and expenses amounting to almost the whole compensation that was awarded in the lawsuit filed by him against the state for unlawful detention. In other cases, the fees and expenses may exceed the compensation awarded to a plaintiff who has only partially "won" the case. This makes the outcome of the lawsuit absurd and hinders the access to real justice.

· The lack of an effective mechanism for protection against a refusal by the state to implement a court decision, as well as against excessive delay in the implementation of such a decision. In *Angelov* (2004), *Mancheva* (2004), *Rahbar-Pagard* (2006) and *Sirmanov* (2007) the ECtHR ruled against Bulgaria for violations arising out of the lack of an effective mechanism for involuntary execution of judgements under which the state is sentenced to pay a compensation for unlawful actions. In order to have all these ECtHR rulings implemented, the

[10] *For a more detailed description of the decision, see below in this section.*

Committee of Ministers expects Bulgaria to introduce in its legislation effective mechanisms against the non-compliance with effective court rulings.

- The practice of unlawful or too lengthy preliminary detention, due to the refusal of judiciary authorities to consider the material resources of the person when defining the bail amount, their own obligation to provide sufficient justification of detention in case of failure to pay bail, as well as the ECtHR requirement to motivate deprivation of liberty decisions during trial. The government did nothing to ensure that the magistrates comply with their obligation to consider these factors when depriving persons of their liberty.

In 2007, the Committee of Ministers also identified other structural deficiencies of the Bulgarian judiciary system that should be rectified by the state as required in ECtHR judgements. These include:

- The excessive length of criminal proceedings and the lack of effective means of protection against this;
- The excessive length of civil proceedings and the lack of effective means of protection against this;
- The bad, inhuman conditions at the investigation detention centres and the lack of effective means of protection against this;
- The unjustifiable formalistic case law under the Liability of the State and the Municipalities for Damages Act, which recognizes the non-material damages resulting from proven unlawful acts only when these have been proven by formal evidence, such as eyewitness statements, etc., even when the acts are such that it is practically impossible that the affected persons have not suffered.

In 2007, the European Court of Human Rights in Strasbourg issued many judgements against Bulgaria pertaining to violations of the right to a fair trial. A total of 25 ECtHR decisions established violations of Art. 6 of the Convention. Most of these judgements concerned violations of the requirement for a reasonable length of the court proceedings on criminal and civil cases (in *Nalbantova v. Bulgaria* the criminal proceeding continued for 9 years and 2 months, while in *Kuyumdzhiyan v. Bulgaria*, the civil proceeding continued for 8 years and 9 months). The Court stressed again in some of its decisions that Bulgarian legislation does not include a legal means of protection against the excessive duration of court proceedings, which constitutes a violation of the right to effective remedy under Art. 13 of the Convention.

On July 12 2007, the ECtHR ruled on *Stankov v. Bulgaria*, an application concerning the fees to be paid by plaintiffs to the courts under the Liability of the State and the Municipalities for Damages Act (LSMDA) should their claim for non-material damages be partially rejected. In this particular case, the state was sentenced to pay the applicant a compensation for unlawful detention, but since his claim was for an amount significantly higher than the one awarded, the court defined a fee for the rejected portion of the claim amounting to almost 90% of the compensation granted. The ECtHR held that this system of defining the court fees under the LSMDA placed a huge burden on the plaintiffs and in reality had a restraining effect on their right to access to the courts.

In *Stanimir Yordanov v. Bulgaria* from January 19 2007 the Court found a violation of the right to a fair trial, as the applicant had been sentenced without being present at the court hearings, even though he had indicated his lawyer's address as the address on which he could be summoned. Instead, the courts sent the summons to the plaintiff's old address. The Court held that in this way the plaintiff was not granted the opportunity to defend himself in court personally or through his lawyer and to present arguments in his defence.

5. Freedom of Thought, Conscience, Religion and Belief

The statutory regulation of the relations between the state and religious organisations remained unchanged in 2007. The restrictive and discriminatory *Denominations Act*[11], adopted on December 20 2002, remained in force. By the end of the year, the number of religious organisations registered in Bulgaria ("denominations" in the definition of the Act) was 96.

The violations of citizens' religious rights registered in 2007 and early 2008 can be grouped as follows:

– denial of registration of religious organisations;
– unjustified obstacles to the activities of some "non-traditional" religious organisations;
– obstruction of citizen's constitutional right to disseminate religious information.

Special attention should be paid to the intention of the authorities to amend the legal regime for the registration and functioning of religious organisations, by means of amending the current legislation. In late 2007 and early 2008, high-ranking officials started talking about the need to amend the Denominations Act by introducing a minimum threshold of 2,000 persons for the official registra-

[11] *For an in-depth analysis of the compliance of the Denominations Act with the international standards on religious rights, see the special report of BHC and the Tolerance Foundation, "Religious Freedom in Bulgaria in 2004", available on the BHC website: http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=66*

tion of a religion[12]. There is no public information as to what the regime for the existence and the functioning of the many officially registered religious organisations with under 2,000 members will be. Obviously, however, if such an amendment becomes effective it will severely restrict citizens' religious rights because the regime for the existence and the functioning of the small religious organisations will be in any case less favourable than the regime for the large religious organisations.

On April 12 2007, the ECtHR ruled in favour of the applicant Kalinka Todorova Ivanova on her application against Bulgaria for being dismissed in 1995 from the Shipping Technical High School for assisting Word of Life, an organisation that was at the time considered "a dangerous cult".

A) *Denial of registration of religious organisations*

On February 7 2007, the Sofia City Court (SCC) refused to register the Eastern Orthodox Apostolic Church denomination. The Plovdiv-based organisation filed for registration on December 22 2006. It should be noted that among the denominations' founders is Hristofor Sabev, well-known dissident and proponent of religious rights. The new denomination is Orthodox; two new characteristics have been added to its name, in order to avoid duplication of names, which the law prohibits. It is not just "Orthodox", but also "Eastern" and "Apostolic". In fact, the main reason behind the denial of registration of the so-called "alternative Synod" was that it wanted to have the same name as the recognized by the state Bulgarian Orthodox Church headed by Patriarch Maxim. However, the SCC denied registration on grounds that are obviously lame. The court found that the by-laws of the new church make it evident "that this is a group of Christians who have left the Bulgarian Orthodox Church (a legal entity under Art. 10, para 2 of the Denominations Act)." The court went on to conclude: "It is evident that this group of Christians does not recognize the governing powers of the supreme bodies of the Bulgarian Orthodox Church, which is why it does not seek registration as a local division at the respective district court (Art. 20 of the Denominations Act), but is trying to obtain registration at the SCC." In the court's opinion, a group that identifies itself as Orthodox may only exist as a local division of the Bulgarian Orthodox Church. Therefore, the court stated: "This group is trying to use the registration procedure to solve an internal organisational issue that the court is really able to solve, but following another procedure." Obviously, if these people are looking for independence, they have left the Bulgarian Orthodox Church so they cannot recognize the "governing powers" of the latter. Also, this cannot be an "internal organisational issue" because the founders of the new denomination, who identify themselves as Orthodox based on the main characteristics of their faith, evidently do not want to be associated with the Bulgarian Orthodox Church. For the SCC, however, "not only its name, but the description of its religious beliefs define it as Orthodox, and Art. 10, para. 1 of the Denominations Act explicitly stipulates that the self-governing Bulgarian Orthodox Church – a legal entity by law (Art. 10, para. 2) and thus excluded from the scope of Art. 15 of the Denominations Act – is the expression and the representative of the Eastern Orthodox Christianity."

The denial of registration decision includes also a theological argument: "There is no clarity and a contradiction with regard to the status of the episcopacy, which is fundamental for Orthodox Christianity. No opportunity is allowed for canonical ordainment of presbyters and bishops, given the fact that this religious community does not recognize the canonical leadership of the Bulgarian Orthodox Church, which is recognised by the local churches." It is evident that it is not the court's job to judge whether the canonical rules of a religious denomination is correct or not, since this is up to the discretion of the denomination and the court has no powers in this field.

This decision is a result of the strict application of the Denominations Act. In essence, by means of Art. 10 and the related para. 3 of the transitional and final provisions, the Denominations Act creates statutorily a single organisation, the Bulgarian Orthodox Church, and the court does not allow the existence in Bulgaria of other religious organisations that self-identify as Orthodox. The Eastern Orthodox Apostolic Church eliminated the word "Orthodox" in its name and submitted another registration application in August 2007. Registration was again denied, on the grounds that, according to the Religions Directorate, the principles of the faith were described "too generally". The organisation was thus forced to submit a third registration application in January 2008 and was finally registered in February 2008.

On March 9 2007, the SCC denied registration to the International Community for Krishna Conscience – Sofia, Nadezhda. On July 23, the Sofia Court of Appeals confirmed the decision of the lower-instance court. In early 2008 the final instance, the Supreme Court of Cassation, ruled in favour of denial of registration. Since all three courts quote essentially the same grounds for their decisions, we will only review those of the final instance, the Supreme Court of Cassation. Generally, the court holds

[12] *Interview with Ahmed Yusein, deputy-chair of the Parliamentary Human Rights and Religions Committee, published under the title "96 religions in Bulgaria are too much",* Duma *daily, February 1 2008. On multiple occasions in late 2007 and early 2008, similar statements were made by the director of the Religions Directorate, Assoc. Prof. Ivan Zhelev. See the interview with Zhelev published under the title "Three are enough for a new cult",* Telegraf *daily, January 21 2008.*

that there is no difference between the organisation applying for registration and the existing International Community for Krishna Conscience in Bulgaria. The court accepts that this case is subject to the restriction under Art. 15, para. 2 of the Denominations Act, which stipulates that "the existence of more than one legal entity as a religion with the same name and seat shall not be allowed". However, the name of the new organisation is not identical to that of the existing International Community for Krishna Conscience in Bulgaria (the words "Sofia, Nadezhda" have been added), and the fact that the seats of both organisations are located in Sofia does not imply that they cannot have separate registrations. The Denominations Act does not allow two organisations with a seat at the same location and with the same religious doctrines to have separate registrations. The purpose is to enhance state monitoring of religious organisations' activities on the basis of the one doctrine – one organisation principle. In this way, groups that for some reason want to leave a religious organisation are forced to introduce differences in their doctrines and names, in order to legalise their existence, although in reality these differences are insignificant and even fictitious. This a severe violation of citizens' right to associate in order to meet their religious needs, and the state imposes that they do that under a single governance, even when they object to this.

B) ***Unjustified obstacles to the activities of "non-traditional" religious organisations***

In 2007, as in previous years, the local governments in some cities created unjustified obstacles to the activities of the Jehovah's Witnesses. In the spring, IMRO (Internal Macedonian Revolutionary Organisaiton) activists tried to disrupt the organisation's regional congresses in Varna, Dobrich and Pernik. In November, the bTV and Nova national television stations launched a campaign against the organisation. The occasion was the refusal of blood transfusion by Hristo Hristov, a member of the organisation from Dimitrovgrad who was being treated from internal haemorrhage at the Military Medical Academy in Sofia. In early April, IMRO's Varna division threatened the owner of a hall with a rally and a demonstration unless he withdrew his consent for his hall being used for the regional congress of the Jehovah's Witnesses. The congress was not held. On April 28, several scores of IMRO supporters rallied in front of a hall in Dobrich where a one-day event of the Jehovah's Witnesses was held despite the threats. This event – a rally of a small number of people – was overexposed in the media and covered by bTV with hostile comments about the Witnesses. IMRO proposed amendments to the Denominations Act to outlaw the Jehovah's Witnesses. In the evening on May 2, the SKAT television channel aired a startling malicious broadcast about the Witnesses, hosted by the anchor of the Pa-ra-lax show, Valentin Kasabov. Earlier during the year, in February, the organisation was not allowed to rent a hall in Sofia. Stones were thrown at its Kingdom Halls in Asenovgrad and Sofia on multiple occasions during the year; windows were broken. The organisations's vehicles had their tyres cut in Plovdiv and Kyustendil. The law enforcement bodies remained passive in all of these cases; they would take in the complaints but, according to representatives of the denomination interviewed by BHC in February 2008, would not do anything. In response to the complaints about the attacks against the organisation's prayer houses in Sofia, the police said there was nothing they could do and that the Witnesses needed to install cameras or hire security guards "if they wanted the attacks against their premises to end".

In late June, the municipality of Varna initiated a series of inspections of the recently started construction works of the so-called Kingdom Hall. On July 4, a group of citizens from the Mladost residential area held an IMRO-instigated protest rally against the construction. During the rally, which was covered widely by local and national television stations, they claimed that the "prayer house" will "be a threat to [their] children" and that it constitutes "an attack against Orthodox Christianity". The same day the mayor of Varna issued a penal provision to fine the technical site manager at the site with BGN 3,000 (1,500 Euro) for alleged failure to comply with some technical requirements at the site. Due to these actions – which are being appealed in court by the legal advisors of the Jehovah's Witnesses for six months – the building works have been suspended for the last nine months. The site manager was charged with "documentary fraud" and "threat". What is typical for the Varna case is that the hostility against this religious community is fuelled by organisations such as IMRO, but is in fact led by the mayor of the municipality, Kiril Yordanov.

The Jehovah's Witnesses also reported a series of cases, mostly in Veliko Tarnovo and Blagoevgrad, where local members of the denomination were summoned by the police and instructed to terminate their activity (mainly, "knocking on doors").

In November, the bTV and Nova Television – on the occasion of the refusal of Hristo Hristov, a resident of Dimitrovgrad, to accept blood transfusion when he was hospitalized with haemorrhage – initiated a full-scale hate campaign against the Witnesses, accusing them of multiple violations in several broadcasts[13].

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[13] *For more information, see Emil Cohen, "The propaganda practices of the former Central Committee of the Bulgarian Communist Party are still valid",* Obektiv, *issue 148/2007. Available online at: http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=565* .

A series of incidents involving buildings of the Muslim religion in Bulgaria were registered in 2007: insulting graffiti, attempted attacks, broken windows. According to the Chief Mufti's Office, the mosque in Pleven was desecrated ten times with swastika drawings on its walls. The mosque in Kyustendil, which suffered many attacks in past years, had its windows broken in December. There were also incidents involving the mosque in Silistra. As in previous years, no effective investigations were conducted.

C) *Unjustified obstruction of citizens' right to freedom of information, in particular religious information*

On the February 20, the heads of the National Security Service (NSS) announced the discovery of a criminal group of four "Islamists" under the leadership of the former mufti of Sofia, Ali Hayredin. The group was preaching "radical Islam, the ideology of Jihad and Wahhabism" and maintained "relations with banned Islamic organisations and mostly with Ahmad Musa, a Jordanian expelled from the country six years ago". According to the security services, these people "have conducted their intelligence activities" via the Internet, by maintaining websites containing information on Islamic teachings. The four were arrested; three days later they were released with a minimal bail. The official announcement stated that they had been charged with a crime under Art. 108 and 109 of the Penal Code ("proclaiming fascist or other anti-democratic ideology or a violent change of the constitutional order" and "forming or leading a group that aimed to commit a crime against the Republic."). This is why "the websites were closed" and the computers of the perpetrators - seized. No proof was presented that the "closed" Islamist educational websites contained texts propagating "fascist or anti-democratic ideology" or that the Union of the Muslims in Bulgaria, an NGO, is "a criminal group that intends to commit a crime against the Republic". At the same time, the media induced hatred to Islam among its readers and viewers. By year's end, the charges had not resulted in sentences[14].

6. Freedom of Expression

The year 2007 posed some severe tests to freedom of expression in Bulgaria. It was restricted in several ways:

- through control by publishers and media managers over the contents of their publications, to the benefit of vested economic and political interests;
- through the media commercialization process that continued in 2007, and the transformation of public media into commercial ones;
- through inadequate regulation by the Council for Electronic Media (CEM);
- through political control over the national electronic media, by the appointment on managerial positions of persons close to the government;
- through repressions and political pressure against unpopular publications in the Internet and other public events, while at the same time tolerating or encouraging nationalist, racist and anti-Semitic public events and publications.

Journalists and editors from the *Politika, Klasa* and *Pogled* newspapers were dismissed in 2007 and early 2008. The right of newspaper journalists to freely express their opinions in their articles mapped the problems in the publisher-editor-journalist relations in three groups:

- *Economic* – Journalists are required to be a function of the publisher's editorial policy. Any deviation from this policy is followed by a severe intervention in their articles, or by dismissal.
- *Political* – The publisher is directly or indirectly connected to various political powers, business groups or government bodies.
- *Advertising* – These are identifiable not only in the press but also in broadcasts. Newspapers' behaviour is still marked by corporate interests that cloud the horizon before freedom of speech.

The discharges affected even the newspaper of the Union of Bulgarian Journalists (UBJ), *Pogled*. The deputy editors-in-chief - Evgenii Stanchev, Todor Tokin and Rumen Leonidov – were all dismissed. This severe "sanction" was imposed by decision of the UBJ board. The only reason behind the decision turned out to be the "indecent" language in Rumen Leonidov's article in the column "Between the Quill and the Whitewash Brush"[15]. The following year Leonidov and Tokin were again dismissed, this time from the *Klasa* newspaper. Thus, they set a record for being dismissed, each one of them, five times from different periodicals over the past several years[16]. The professional community remained indifferent.

The year also saw changes in the ownership and the management of some periodicals, accompanied by changes in the editorial policy. The *Monitor* daily came into the ownership of Iren Krasteva, closely associated

[14] *See* ***Freedom of Expression*** *below. For more details, see Emil Cohen, "Yet another 'Islamic threat' scare". Available online at: http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=458 (in Bulgarian).*

[15] *See* Obektiv, *issue 149.*

[16] *See* E-newspaper, *24-25 January 2008.*

with the ruling party, and her son. The founder of the *Politika* daily, Radostina Konstantinova, divested from the newspaper. Valeri Naidenov unexpectedly resigned as editor-in-chief of *Klasa*.

In the context of these processes, which bring insecurity, dependence on owners and managers, and interventions over the head of the editors-in-chief, the situation in the regional press[17] needs special attention. Authors such as Bozhidar Bozhkov and Galentin Vlahov, chair of the Bulgarian Regional Media Association[18], provide precise description of what's happening in the regional press: fear of lawsuits, economic coercion, arbitrary attitude to freedom of speech on behalf of the business circles, lack of professional solidarity.

The year was also marked by the transformation of public media into commercial ones. Radio New Europe, successor to Free Europe Radio and the last radio financed by the civil sector, terminated its operations in January. Its funding from the Open Society Institute was cancelled and its license was changed. It was transformed into Z-Rock Radio and completely changed its programming, from a public to a music radio station. The civil society thus lost one more media lever, the inclusion of different voices diminished significantly, and the scope of debate shrank to insignificance. As with another radio station financed by the non-governmental sector, the Center for the Study of Democracy and its Vitosha Radio – the good intentions of both the NGO sector and the journalists were crushed by the commercial.

In many cases the Council for Electronic Media, whose members are closely associated with the ruling parties, acted unscrupulously and to the benefit of the authorities. On many occasions, it refused to monitor private and public operators for compliance with the Radio and Television Act. The BHC informed the CEM about possible violations by the N-Joy and Z-Rock radio stations, but has received no response from them. In late 2007 and early 2008, the CEM postponed the finalization of the competitions for TV licenses in the three largest cities – Sofia, Plovdiv and Varna – until the adoption of a national digital frequency plan.

The competitions for general directors of the Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) were indicative of the marketeering behaviour of the regulator during the year. Ulyana Pramova, supported by the Bulgarian Socialist Party, was appointed BNT Director General. That she would get the job was not a secret to neither media observers, nor the general public. A day before the selection, CEM announced that she had been chosen for the second time. At first glance, things look differently at the national radio. Prior to the expiration of her term, Director General Polya Stancheva left one final proof of servile behaviour. In February, she issued an order to discipline the BNR regional correspondent in Ruse, Natasha Dimitrova, for asking the Interior Minister an "inappropriate" question. The new Director General, Valeri Todorov, was appointed in May. He, too, is associated with the ruling parties and his appointment did not meet any journalistic protests. But what remained unclear for the general public was why he dismissed the previous management team – Galina Spasova, Petar Galev and Krasimir Lukanov. His concept on the development of the radio was not discussed widely. As a result, apart from the undoubtfully strong voices of Horizont – Lili Marinkova, Petar Volgin, Silvia Velikova, Diana Yankulova, Irina Nedeva, Yana Boyanova, Daniela Goleminova – the morning segment "Predi Vsichki" is progressively filled with boringly long "expert" interviews, coverage from some village over a trivial topic, and voices of passers-by edited to sound like "vox populi". The midday segment, "12 plus 3", is not much different. The anchors question the same political actors on trivial topics. Observers note with concern the falling ratings of BNR and BNT.

On several occasions the police intervened with actions that were questionable from a legal point of view, in order to control website contents. On February 4, the police arrested four persons, including two women and the former mufti of Sofia, Ali Hairedin. They were detained on charges of "preaching radical Islam" through two websites. According to the police, the websites called for "replacement of the legal order in the country" through the creation of a "Sharia' state". All four detainees denied the allegations. The content of the websites was never made public and many observers were left with the impression that the arrest was just another expression of anti-Muslin xenophobia[19].

On several occasions during the environmental protests in July the police summoned bloggers for questioning[20]. The reason behind the summons was information about upcoming protests they had published on their websites. One of the summoned bloggers, Mihail Bozgunov-Michel says he received summons to report to the police station "for reference". At the station the officers informed him that publishing information that calls for disruption of the public order is unlawful. The blogger signed a warning protocol to stop publishing potentially unlawful materials on his website.

At the same time, no state body showed any interest in the anti-Semitic and anti-minority messages that the TV channel SKAT spewed on a daily basis. This TV station is the propaganda tool of the extreme nationalist party, Ataka. Many racist and xenophobic websites that openly called for ethnic and religious hate and discrimi-

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[17] *See* Obektiv, *issue 149.*

[18] *See* Obektiv, *issue 151.*

[19] *See* ***Freedom of Thought, Conscience, Religion and Belief*** *above.*

[20] *See* ***Freedom of Association and Peaceful Assembly*** *below.*

nation never came in the focus of the police. In November, the BHC signalled the Supreme Cassation Prosecutor's Office with regard to the publication in 2004 of Emil Antonov's book *The Foundations of National Socialism*. The book propagates the ideology of national socialism and anti-Semitism. In a manner unprecedented in new Bulgarian journalese, Antonov calls the Jews "crooks", "born criminals", "freaks", "alien, vile and harmful people", "scum" and "Jewdiots". In his words, they are the destroyers of the Slavic people who rob everyone who is not a member of their race. He accuses them of "ritual killings" and "genocide against the Arian people". He rejects the Holocaust as "the greatest deceit of the 20th century". For Antonov, the democracy is "Jewdemocracy" and he rejects all its principles. To him, national socialism is the alternative: "Following the crumble of communism and of "democratic" capitalism, only the third path remains, the path of the national socialist revolution." He propagates the idea for the racial supremacy of the Arian people, repressions against the Jews and other minorities, totalitarianism and conquest wars. He openly calls for the "rejection of Jewdemocracy and a ban on parties, freemason lodges and anti-Bulgarian foundations". He praises Hitler as "the strongest man of the 20th century" and "the greatest politician of all times". He even goes as far as to accuse him of being too sentimental: "But German sentimentality stopped him from finishing the work of his life, which could have saved not only Germany, but the whole chose Arian race, from extinction". On February 29 2008, a prosecutor from the Sofia City Prosecutor's Office refused to initiate preliminary proceedings against Antonov, on the grounds that "there is no data that the book has influenced the citizens in developing a negative attitude to the Jewish people and the state of Israel", and that Antonov wrote the book "with cognitive purposes".

In April, a project of two scientists from the Berlin Free University, Martina Baleva and Ulf Brunnbauer, sparked a fierce scandal. The project, *Batak as a Place of Memory*, aimed to show how the Batak massacre was depicted in a painting by a Polish artist and to indicate its role in the collective memory of the Bulgarians. Although the authors never denied the massacre and even stated this in an open letter,[21] the nationalist circles targeted them in one of the largest mass hysterias in the post-communist period. It produced frenetically repeated false public accusations, brandings at special meetings, threats to the authors and to Baleva's parents, public burnings of their book.[22] Following a series of isolated attempts to counter the campaign against the project, 669 humanitarians decided to consolidate their efforts. In an Internet petition, they declared: "We are against the political censorship and the administrative pressure on the free academic debate imposed by the state institutions and the academic leaders. We shall not accept a monopoly on the historic truth, least of all one that covers a rough manipulation with a political purpose"[23]. The opponents of the project initiated their own campaign. Descendants of victims of the Batak massacre insisted that the state revoke Martina Baleva's citizenship. Professor Dragomir Draganov from Sofia University appealed to the Bulgarians to stop using the products of the German company Bosch, because the project was sponsored by the Robert Bosch Foundation. The Panagyurishte Municipal Council decided to express in a declaration its protest against "the attempt of "The Myth of Batak Project" to revise the history of Bulgaria". The Holy Synod of the Bulgarian Orthodox Church ordered the Plovdiv metropolitan bishop Nikolai to collect information about the victims of the massacre, so that the church could canonize them. Even the Minister of Culture, Stefan Danailov, got involved. He called the project "mock science forgery of history". However, the real culmination was marked by the actions of President Georgi Parvanov. A discussion was held at the Batak community centre on May 16. At this event, the President branded the project, saying: "Counting victims in order to justify goals pertaining to the current situation is cynicism". This was the first public statement of a head of state on a scientific project in the new Bulgarian history.

In 2007 the freedom of speech in Bulgaria was the object of two decisions of the European Court of Human Rights in Strasbourg. The applicants in *Glas Hadezhda Ltd. and Anatoli Elenkov v. Bulgaria*, October 11 2007, applied to the State Telecommunications Committee for a license to broadcast a religious radio program. The Committee, on the grounds of a decision by the National Radio and Television Board, refused to issue the license as the applicants' project did not meet the requirements for social or business programs or programs targeting a regional audience. The Supreme Administrative Court refused to exercise judicial control on the lawfulness of the decision of the National Radio and Television Board, on the grounds that the Board had complete discretion in making such decisions. The Court held a violation of the freedom of speech and stressed that the plaintiffs have received no protection whatsoever from the courts due the refusal of the latter to exercise control on the said administrative act. This has denied the applicants protection against arbi-

[21] *See* Dnevnik, *April 26 2007.*

[22] *See, for example: http://www.bulphoto.com/image.php?img=78667, accessed on March 2 2008.*

[23] *See http://www.bgpetition.com/apel_na_bg_istorici/index.html, accessed on March 2 2008.*

trary breach of their freedom of speech. The Court pointed out also that, according to the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain, the decisions made by the regulatory bodies need to be duly reasoned and open to review by the competent jurisdictions.

With regard to the second case, *Peev v. Bulgaria* from July 26 2007, a national newspaper published a letter by the applicant, Peicho Peev, who at the time had an expert job with the Criminology Research Board of the Supreme Cassation Prosecutor's Office. In the letter, the applicant criticized the Prosecutor General. As a result, a search of his office was conducted and he was later dismissed. The Court held that the Bulgarian government had not provided any legal grounds justifying the search of Mr. Peev's office, therefore the search was illegal. The Court also indicated that the sequence of the events, including the fact that the applicant had been dismissed soon after the publication, brought to the conclusion that the actions against him were a consequence of his letter. These actions led to unlawful restriction of his right to freely express his opinion. The Court also found a violation of Art. 13 of the ECHR, due to the fact that the applicant had not had effective means for protecting his rights.

In 2007, protection against the breach of privacy in Bulgaria was the subject of a decision of the European Court of Human Rights that has significance with regard to the exercising of the right to information. In a judgment from June 28 2007 on *Association for European Integration and Human Rights and Ekimdjiev v. Bulgaria*, the Court held that the Bulgarian 1997 Special Intelligence Means Act is inconsistent with the standards of the Convention. The applicants claimed that the provisions of the act allowed the use of special intelligence means against them at any time, without their knowledge. The Court held that the act did not provide sufficient guarantees against misuse of special intelligence means, as well as that no means of protection against such misuse exist. The Court therefore held that there had been a violation of the right to respect of privacy and correspondence under Art. 8 of the Convention.

7. Freedom of Association and Peaceful Assembly

The year 2007 saw a boom of protests and rallies that put to a test the legislation and the institutions invested with guaranteeing the citizens' right to peaceful assembly. Environmentalist, civic and human rights groups, industrial and professional groups, such as teachers, miners, taxi drivers, foresters, transport workers, etc. went out to protest. The trade unions were especially active in 2007, initiating and organising protests. The environmentalists were the most active group in terms of the number and variety of protest actions. In the fall of 2007, the teachers held the largest strike in Bulgarian history.

The tensions between the environmentalists and the government had accumulated as early as the end of 2006. Even then it was obvious that the interests of the citizens and the government intersected in three points where escalation of conflict was inevitable: the illegal dumps, mines and quarries; the delays and the violations of the EU legislation in defining the Natura 2000 locations in Bulgaria; and the overdevelopment and the illegal construction along the Black Sea coast and in the mountain resorts, as well as the corruption arising from it. On February 15 2007, the government adopted a list of Natura 2000 protected zones that was considerably shortened. A mere half of the scientific proposals were approved and the media and the citizens immediately saw the corruption criterion of the ministers. A spontaneous civic protest was organised and held via the Internet and other informal communication channels. Since the authorities were not notified, the protest occurred with a minimal infringement on the rights of the other citizens. The protesters, dressed in pyjamas and wearing "Naturally Crazy" badges, walked on the streets of the capital, keeping to pedestrian zones, underpasses, pedestrian crossings, etc. Between 50 and 100 persons joined the protest. Still, the protesters were dispersed and three participants were arrested and fined.

On July 2, the crossroads at Orlov Most, and later The Blue Cafe, were blocked by over 2,000 protesters. This protest was also spontaneous, without prior notice, and was sparkled by the Supreme Administrative Court's revocation of the natural park status of Strandzhata. The police arrived immediately and arrested 37 participants, four of them minors. Several more protests followed and were dispersed by the police, often with the use of excessive force.

A participant in a mass protest of miners, organised by trade unions on July 4 in Galabovo, was severely assaulted when the police tried to break the protest.[24] According to the police, the miners tried to force their way through the police line, in order to block a road. The TV coverage dismissed this statement, showing clearly two officers holding the protester while a third officer was bashing his head against the pavement. Tear gas was also used. Three miners were hospitalised with severe gas poisoning.

As in previous years, the right to peaceful assembly of the Macedonians in Bulgaria was restricted in contradiction to international law. On April 22, UMO (United

[24] *See* ***Protection from Torture, Inhuman and Degrading Treatment or Punishment.***

Macedonian Organisation) Ilinden activists were restricted when trying to commemorate the anniversary of Yane Sandanski's death at the Rozhen Monastery. Although the mayor did not ban the rally, the Blagovgrad regional governor, Vladimir Dimitrov, did. The activists were allowed to participate only as individuals, not as an organisation. As a result they were stopped and searched by the police and some of them were even issued citations. The celebration was marked by strong police and gendarmerie presence.

In May and July, officials from the Sofia municipality banned a peaceful vigil in front of the Chinese embassy, organised by activists of the Bulgarian Falun Dafa Association. They were allowed to hold an 'information day' at another location, but were warned "not to undertake any actions concerning the Bulgarian-Chinese relations". On July 23 2007, the Sofia District Court decided not to review their complaint against the refusal. According to the court, only the mayor's refusal to allow the event was subject to judiciary control, and not the changes that he had made with regard to how the event was to be organised.

The judiciary reacted inadequately to other challenges in the protest-riddled 2007. While the courts addressed police arbitrariness, the arbitrary decisions of municipal officials to ban events was left uncontrolled. The court dismissed three of a total of twelve orders for detention during protests issued in 2007. The detention was confirmed in four cases, and the rest of the cases are still pending. In several cases the court also cancelled the fines imposed by the police. However, the remaining scores of appeals were undecided at year's end.

The Sofia municipal authorities were the busiest with regard to the planning and the security at protests and rallies. The officials imposed many bans and restrictions that violated the right to peaceful protests. However, at the end of the year this practice had faded. During the first half of 2007, the Sofia municipal administration banned or restricted almost all environmental events, including the regular protests with regard to Natura 2000 held every Thursday in front of the Council of Ministers. The complaints filed against the bans were not reviewed within the 24-hour period stipulated by law; instead, they became the object of quarrels and exchanges between the Sofia City Court and the Sofia Administrative Court. The complaint filed by the association of light drug users, Promyana, against the banning by the mayor of Sofia of their annual rally, had a similar fate.

On several occasions during the year unpopular groups were unable to obtain registration as legal entities, which was a violation of their members' right of association. Despite the October 2005 judgement[25] of the European Court of Human Rights in Strasbourg, the UMO Ilinden PIRIN political party (PIRIN is the Bulgarian acronym for "Party for Economic Development and Integration of the Population"), supported by the Macedonians in Bulgaria, was denied registration three times in 2007. The Supreme Court of Cassation dismissed in February the party's complaint against a previous denial of registration. In August the party decided to try again, but on August 23 the Sofia City Court denied registration. The decision was motivated by what the court thought were deficiencies in the submitted documents. In a clearly unmotivated statement, the court held that "it is unclear how 685 declarations signed by adult Bulgarian registered voters were obtained in less than 15 days, so as to have a constituent assembly on August 15, 2007." In another section of the decision, the court held that "the goals and the objectives of the party under review are of a wishful character" and are "rather goals of a non-profit association under the Non-Profit Legal Entities Act than of a political party under the Political Parties Act[26]." On October 11, the Supreme Court of Cassation confirmed the SCC decision, thus opening to road before UMO Ilinden PIRIN to a file new application before the Strasbourg Court.

On July 10 the Supreme Court of Cassation refused to register Menderes Kungyun's non-profit association, National Turkish Unification. This association became the target of a furious media campaign that condemned it as nationalist and separatist, although the by-laws and the public appearances of its founders gave no reason for such conclusions. In 2006, the association was denied registration twice, for setting up goals in violation of Art. 12, para. 2 of the Constitution. In its decision, the Supreme Court of Cassation confirmed the reasoning of the lower-instance courts (inadmissibility of civic associations setting political goals), but also added new ones. The court stated that the association constituted a threat to Bulgarian national security because it identified itself as "Turkish national". According to the court, by doing so the association was "oppos[ing] our nation as a whole".

In 2007 freedom of association in Bulgaria became the object of discussions in two decisions of the European Court of Human Rights. The first case, *Zeleni Balkani v. Bulgaria*, concerned the right to peaceful assembly. The local authorities banned a peaceful protest planned by Zeleni Balkani, an organization working to protect the environmental diversity in Bulgaria. The event was planned as a protest against the actions initiated by the Municipality of Plovdiv to clear the riverbed of the Maritsa and cut the trees around the river. The applicant appealed the ban in court, and it dismissed as unlawful. The Court found a violation of Art. 11 of the Convention, and that the ban of the event was illegal.

[25] *See* Human Rights in Bulgaria in 2005, *Annual Report of the Bulgarian Helsinki Committee, March 2006.*

[26] *CC decision on case no. 11965/2007.*

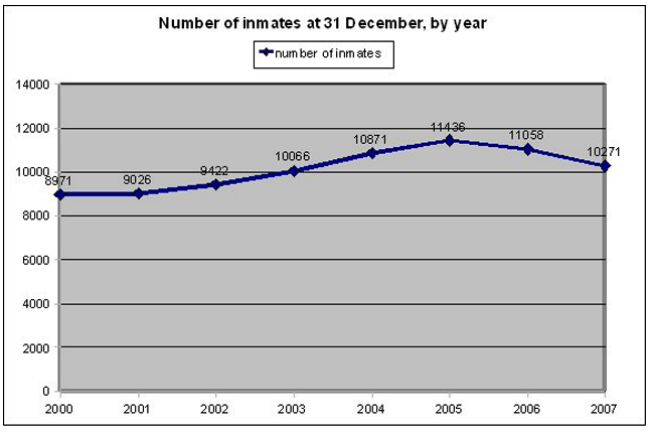
The Court also found a violation of Art. 13 of the Convention, because – despite the fact the Meetings, Rallies and Manifestations Act required the courts to decide on a complaint within five days – the courts had made their final decision one year after the planned event. The court procedure was therefore not an effective means of protection of the applicant's right to peaceful assembly.

In the second case, *Zhechev v. Bulgaria* of June 21 2007, the applicant tried to register an association that had as its goals the restoration of the monarchy and a change of the state structure. The Bulgarian court refused registration, as the goals of the association were found to be in contradiction with the country's Constitution. The Court found a violation of Art. 11 of the Convention, as the goals declared by the association did not contradict the principles of democracy, nor was there any evidence that the association was planning on using violent or non-democratic means to achieve its goals.

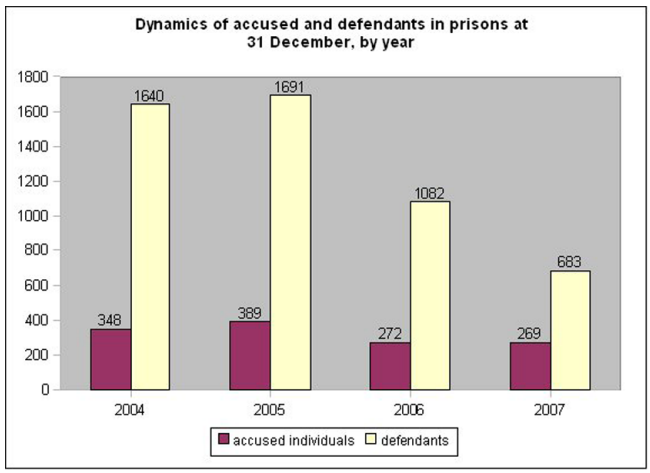
8. Conditions in Places of Detention

Prisons

The number of prisons in Bulgaria remained unchanged in 2007. Of a total of 13 prisons, eight are used to accommodate multiple offenders; three are for first-time offenders; one for women and one for juveniles. The prisons have a total of 23 dormitory facilities of open, transitory and closed type. Over the last two years, the total number of inmates has been going down. By December 31 2007, they were a total of 10,271 inmates in the country's prisons, which marks a 7% reduction over December 31 2006. The chart below shows the number of inmates in prisons and prison dormitories in 2006/07.

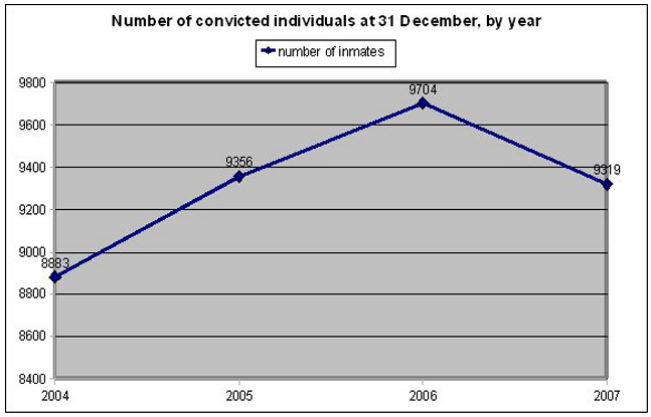


For a second consecutive year, there was a drop in the number of remand prisoners (accused and defendants). The chart below shows the number of remand prisons in the prisons over the last four years:



The significant reduction in the number of defendants can be attributed to the accelerated pre-trial and trial proceedings in criminal cases. This has resulted in an improvement in of the conditions for the respective groups in the prisons.

Unlike previous years, when the number of convicted individuals in prison increased steadily, in 2007 the trend changed. The chart shows the number of convicted individuals in prison over the last four years:



The 2002 amendments to the Implementation of Penal Sanctions Act resulted in a gradual increase in the number of inmates placed in prison dormitories. Such dormitories exist in all prisons for adults. The opportunities for the accommodation of inmates in dormitories of a transitory type were used to their full extent in 2007. This, combined with the overall decrease in the number of convicted individuals, resulted in alleviating the overcrowding in the prisons for multiple offenders and in the dormitories of a closed type. At the same time, however, the capacity of several dormitories of a transitory type proved insufficient. In the prisons in Lovech, Plovdiv and Burgas, the number of inmates in dormitories of this type exceeded their capacity.

Despite the overall positive development towards a reduction of the total number of inmates, the buildings

and the facilities in the Bulgarian prisons remained old and obsolete, and the funds allocated for their renovation – insufficient. Most of the prison buildings in the country were built in the 1920s and the 1930s, while the main buildings in the prisons in Bobovdol and Pleven were formerly hostels, which were adapted to serve as prisons.

Even after Bulgaria's accession to the European Union, no penal sanctions implementation strategy was developed that could result in improved conditions in prisons. In 2007 the Ministry of Justice and the Central Penitentiary Administration tried to motivate the government to allocate funds for construction or at least for renovation of the country's prisons. With the exception of the buildings provided by the Municipality of Radnevo to be used as a prison, their efforts were in vain. Various plans – to identify locations for the construction of new prisons, to repair and renovate existing buildings or to build a brand new prison – were announced publicly. In the end, the lack of clarity on the future of the individual prisons demotivated all investment projects. Nevertheless, several prisons announced public tenders for reconstruction of premises, construction of stand-alone lavatories in cells, construction of sewers, meeting rooms and premises for visitors.

The conditions in many prisons continued to be well below those required by the international standards. In some prisons, such as those in Pleven, Varna and Burgas, the personal space per inmate was not more than 2 m^2, and the open-air space - under 1 m^2. In the most overpopulated prisons there are double- and even triple-bunk beds. The dormitories of a closed type, just like the main buildings of most prisons, are in urgent need of measures to reduce overpopulation, increase personal space and improve cell lighting and ventilation. The cells in eight of the twelve prisons do not have their own toilets. During the day, a lavatory is used by 30 to 50 inmates. During the night lockdown, the inmates in some prisons are forced to use a shared bucket, in front of their cell mates. The general condition of the sanitary facilities – lavatories, bathrooms and toilets – is deplorable, without even the most basic conditions to keep them in a good hygienic state. The lavatories in most prisons have no hot water, much less clothing washing and drying facilities.

In late 2006 - early 2007, the electronic media broadcast information about the Ministry of Justice's initiative to submit to the National Assembly a proposal for an amnesty for some of the inmates on the occasion of Bulgaria's accession to the European Union. Later, when the proposal was reviewed by the Council of Ministers, it turned out that there was strong opposition to it by members of parliament and the public. In the end, the proposal was put on hold by the Parliamentary Committee on Human Rights. The information about the proposed amnesty generated excessive expectations among the inmates in several prisons. When it became clear that the National Assembly would not vote on the bill, the inmates in several prisons began protests, asking also for better conditions in prison facilities. Some 70 inmates from the 12th group in the Sofia prison were most persistent in maintaining their requirements; physical force and restraining devices were used to get them back to their cells. The prison management's report to the Prosecutor's Office stated that the inmates refused to return to their cells and formed groups sitting on the floor in the far end of the hallway. Batons and physical force were required to deal with the situation. All injured inmates were checked by a physician and received the necessary medical assistance. The protesters agreed that the inspector of the group had been unable to communicate with the inmates and had opposed them against each other. Also, he was unable to mediate between them and the prison management, which explains why the protest of this particular group was so persistent.

The medical services in the prisons continue to face serious problems with regard to staff and material deficit and the impossibility of providing fully the necessary medical assistance. The medical services in the prisons are not integrated in the national healthcare system in terms of facility standards, administration, reporting, statistics and volume of medical check-ups. In cases of emergencies and urgency, external consultations and tests, the prison administration uses informal mechanisms, such as agreeing free check-ups and tests based on collegial relations between doctors. Approximately 75% of the new inmates had no medical insurance and were practically excluded from healthcare during the initial period of their prison stay. In addition, whole medical service sections, such as regular check-ups and prevention, ordered by the Ministry of Health, were not provided in accordance with the standards. With several notable exceptions, the medical centres in the prisons did not meet the requirements of the Medical Facilities Act. The form chosen by the government, "medical centre", turned to be extremely rigid and unfit for the penitentiary system. The medical staff in prisons report to the respective warden. The penitentiary system therefore lacks objective control with regard to the public health facilities and the medical services.

The growing number of inmates suffering from addictions hinders the possibilities for quality therapeutic activities. The specific profile of the perpetrators of drug-related crimes does not change the legal status of this group of inmates and does not include additional medical or re-socialisation services. Therefore, the risk of repeated offence after their release is very high.

There is a sustainable trend towards an increase in the relative share of inmates in need of specialised psy-

chiatric assistance. In order to prevent practices involving torture or inhuman treatment in prisons, medical staff need to be instructed to document evidence of violence, self-injury and sexual abuse. This would help the competent authorities in investigating the complaints.

Despite an upward trend, there wasn't much progress in inmate employment in 2007 in comparison to previous years. Work in Bulgarian prisons is not subject to the general labour legislation. The lack of social insurance for working inmates, the bad working conditions, the lack of occupational incident reporting to the competent institution were all obvious discrimination practices. In many cases the identification of the workload and the compensation were not based on any legislative basis and were the product of the subjective judgement of officials.

The disciplinary and regime practices in the prisons need to become more precise in terms of the identification of specific penalties and incentives for specific violations or actions of inmates. Given the growing number of inmate-to-inmate violence and abuse complaints, prison security staff need to be instructed not to be inactive and not to allow such actions. The practice to appeal before the minister of justice the decisions of the committee under Art. 17 that deals with parole was widely used in some prisons in 2007. This raised the question whether the committee's decisions are in essence administrative acts and whether decisions and, respectively, repeals of such acts by the Ministry of Justice are legitimate. Insofar as the committee's decisions determine the release under parole and other measures alleviating the legal status of inmates, strict pre-court supervision on the compliance with legal and moral norms during the risk assessment would hinder manifestations of subjectivism and corruption practices in the prisons, similar to those established and investigated in the course of the year.

Investigation detention centres

By December 31 2007, there were 760 individuals detained in the country's investigation detention centres, an insignificant reduction over the previous year when their number was 768. A total of six detention centres were closed in 2007 - in Pavlikeni, Troyan, Elin Pelin, Pirdop, Sevlievo and Nesebar - bringing the total number down to 44. The closure of these detention centres did not result in increasing the number of detainees in the neighbouring detention centres. It was a part of a governmental programme adopted in late 2006 which called for the closure of 33 detention centres due to bad conditions and lack of renovation possibilities. At the same time, the programme provided that funds would be allocated to improve conditions. However, no reconstructions or significant improvements in the investigation detention centre facilities were effected in 2007. Therefore, the general conditions in which persons who have not been convicted are held are worse than those in the prisons, and in many cases constitute inhuman and degrading treatment. The great number of judgements that found inhuman conditions, both of domestic courts and of the European Court of Human Rights in Strasbourg, did not encourage the reform process in the investigation detention centre system.

The buildings of many investigation detention centres do not allow repairs that could provide normal lighting and ventilation or opportunities for detainees to perform physical exercise and activities. For yet another year, the busy investigation detention centres in cities such as Plovdiv, Dobrich and Shumen, as well as those in the border area at Svilengrad, Petrich and Slivnitsa, the number of detainees exceeded significantly the capacity and it was impossible to provide each detainee with a bed and minimum living space. With regard to the last two detention centres, no management decision has been made to close them or where to have them moved. The investigation detention centre system is extremely burdened with the impossibility to provide natural light and fresh air in the cells, as the latter have no external windows – a fact that also hinders the ventilation. With the exception of the detention centres in Sofia, the remainder do not have toilets in the cells. Due to this, the access to a toilet at any time depends on the will of the security staff who should take the detainees to the restrooms upon request. More than half of the detention centres have no open-air walking facilities or premises for physical exercise and the detainees do not have the opportunity to walk or move.

Approximately a third of the investigation detention centres have no premises for visits by relatives, friends or lawyers. The detainees are not provided opportunities for meaningful activities or access television and radio. The medical services in the detention centres are still not integrated in the national healthcare system; therefore, the number and the quality of medical services is low and restricted only to actions in critical situations. Medicine and medical consumables are at the bare minimum and specialised medical assistance is provided in extreme cases only. The same holds true for dental care.

In 2005 the Supreme Cassation Prosecutor's Office conducted an inspection of all investigation detention centres and found out that some of them were totally unfit for use and did not meet the European requirements for minimum space, open-air stay, stand-alone sanitary facilities, lighting, etc. The Supreme Cassation Prosecutor's Office recommended the closure of the detention centres located below ground level, without windows, without sanitary and drinking water facilities, as they could not be reconstructed. For yet another year these recommendations were not implemented.

Correctional and educational facilities for minors and juveniles

In the last several years the number of correctional and educational facilities for minors and juveniles was reduced dramatically. Out of eight correctional boarding schools (CBS) and 24 social educational boarding schools (SBS) in 2000, only five CBS and five SBS remained functional at the end of 2007. The analysis of this reduction indicates that it is not due to the deinstitutionalisation strategy but is a direct consequence of the court procedure introduced with regard to placement. The implementation of this procedure by the local committees is still problematic and the introduction of judicial placement the correctional measures that involve deprivation of liberty will steadily decrease over time.

Mixing different categories of children in SBS and CBS doesn't help their education and upbringing. Children are still placed in such institutions on purely social indications and have to live with children who have been involved in anti-social acts. The two types of boarding schools are usually located in remote, small communities, which creates a series of problems pertaining to the opportunities for communication and social adaptation of the children, problems with the delivery of medical services, finding sponsors, providing transport, hiring skilled teaching staff, etc. The remoteness from the large cities has also a negative impact on the teaching, which is considerably less effective than in the mainstream schools.

Homes for temporary placement of minors and juveniles

A total of five homes for temporary placement of minors and juveniles (HTPMJ) exist in Bulgaria - in Sofia, Plovdiv, Varna, Burgas and Gorna Oryahovitsa. These report directly to the Ministry of Interior and are used for the placement of children who have been involved in 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.

Although the stay at these homes is not of a punitive character, in essence it is a deprivation of liberty, as in these homes the children are deprived of the right to free movement. According to the Juvenile Delinquency Act, the duration of the stay in the homes is up to 15 days and is ordered by a prosecutor. In exceptional cases it may be extended to two months. The statistics indicate that no more than 35 minors and juveniles are detained at the homes for up to 15 days every year. This stay has the character of police detention, the initiative is most often of the inspectors at the Children's Pedagogical Offices or other police bodies, and the prosecutor's decree that confirms the request for detention is issued without a study of the necessity for such detention. In one of the most severe violations of the international laws that guarantee personal liberty, the law does not stipulate an opportunity for appeal of these detentions in court. This practically allows the children to be detained for up to two months without judicial control.

9. Protection from Discrimination

The case law with regard to the Protection from Discrimination Act (PADA) continued to evolve in 2007. The courts issued at least 40 judiciary acts (decisions and rulings) on cases of discrimination of different types, including disability (physical and mental), gender, ethnic origin, age, sexual orientation, social status, religion, political convictions, personal status (including domicile), etc. Despite some just and reasonable decisions, the case law is still very diverse and non-homogenous, plagued by many deficiencies and errors of growth.

Disability

In March, 2007 the Pazardzhik District Court issued a ruling against a private company, Optima Group Ltd. The company manages the public pool in the city and its staff prevented a group of people with mental disabilities from entering the pool, saying they would "scare" the other clients. The court held that this constitutes direct discrimination on the basis of a health condition and adjudicated that a compensation for non-material damages (humiliation, anxiety, a feeling of isolation) be paid to the plaintiffs. The compensation is in the amount of BGN 200 (100 Euro) for each of the seven plaintiffs. It should be noted that the court ruled on reasonable grounds. It held that the non-material damages to the plaintiffs were proven on the basis of - apart from witness testimonies - its "personal impressions based on the normal everyday logic about the [situation] they experienced and the consequences thereof that have reflected on their dignity, self-confidence and feeling of being complete persons." This non-formalistic, adequate approach of the court deserves praise, as it provides effective and not theoretical and illusory protection and because it is an exception from the usual rigidly scholastic approach of Bulgarian judges to proving non-material damages arising from illegal acts of humiliation. The usual formalistic approach which disregards the non-material damages - even when the latter are inevitable due to the extremely humiliating character of the illegal treatment - unless specifically and explicitly proven by formal means, has been criticized by the European Court of Human Rights in applications against Bulgaria. The application was filed with the support of an association in the public

benefit, Chovekolyubie [Empathy] - Pazardzhik, which provides educational and rehabilitation services in the field of mental health.

In May 2007, the Sofia District Court ruled against the Ministry of Education and Science (MES) in a lawsuit for direct discrimination against children with disabilities and special educational needs. The occasion was the MES omission to provide a supportive environment for the integrated education of these children, as well as to secure the funding necessary for the creation of such environment. The court ruled that MES must put an end to its omission of providing a supportive environment, and to abstain from such violations in the future. The court, however, dismissed the claim to have MES put an end to its omission with regard to the provision of the necessary funding for the creation of a supportive environment. The court, on the grounds of the division of power, held that "it is beyond the legal competences of the civil court to oblige any state body to implement the powers assigned to it by normative acts", and that "there are no legal mechanisms of convicting a state body to perform an action [required by law]" and "there is no procedure for involuntary implementation of such a verdict". This is the main deficiency of this decision. In reality, the court announced that there is no legal means in the country protecting the citizens against the refusal of a state body to perform its statutory obligations – a very weak interpretation of the law. At the same time, the court rightly stated that "the imminent consequence from failure to perform obligations aimed at ensuring equal treatment is the violation of the right to equal treatment; therefore, the more unfavourable treatment is not subject to being proved in any other way that by establishing the unlawful omission". The court held also that "the obligation to provide [supportive] environment as a condition for the integration, and hence for the provision of education equal to that available for the children without disabilities, would be completed only if such environment is provided in each and every school in the country (regardless of whether state or municipal)". The court thus indirectly said that the segregation in education based on disability is equal to discrimination – a great achievement in the protection of the people with disabilities' right to equal treatment. According to the court, "assuming the reverse, i.e. that the provision of a supportive environment only in certain schools is sufficient, […] would contradict each citizen's [statutory] right to exercise his or her right to education in a […] school chosen by him or her, and would restrict the choice of the children with disabilities only to the schools in which a supportive environment exists. On general grounds, the latter would be a manifestation of more unfavourable treatment of these children vis-à-vis the children without disabilities, i.e. it would constitute discrimination." The lawsuit was filed by two non-profit legal entities operating in public benefit.

Gender

In March 2007, the Sofia District Court ruled that gender-based admission quotas for the major in Theology at the Sofia University constitute direct discrimination, as they deprive the representatives of one of the sexes of admission as students, despite their better test results vis-à-vis the representatives of the other sex and only on the grounds of their sex. The court held that applicants from one of the sexes, who have received higher marks at the tests, have not been admitted to the university as the quota for the respective sex had been reached. At the same time, applicants from the opposite sex, who have received lower test marks, were admitted. The court held that the right to equal access to the educational institutions means not only access to the application procedure regardless of sex, but also admission regardless of sex. Insofar as the Sofia University invoked the exclusion stipulated by PADA with regard to measures to ensure gender balance in the universities, the court held that a specific need of such a measure must be proven – which the university failed to do. This ruling is a very good example of practical implementation of the important principle of proportionality in deciding cases in which human rights are at stake. The court ruled that the Sofia University put an end to the use of admission quotas, and the MES – to stop proposing such quotas. The lawsuit was filed by a non-profit legal entity operating in public benefit.

In May 2007, however, another composition of the same court ruled differently on an identical case for the major in Law at Sofia University. The court held that the quotas are "necessary" measures in reaching a gender balance between the students, although it acknowledged that "the division by quota has hindered the admission of women who have received higher admission grade-point average than the minimal for the men". In this case, the court did not apply the principle of proportionality and did not study the alternative ways of reaching the desired balance – which is a significant deficiency of the decision. The court also demonstrated a lack of understanding of the essence of direct discrimination, ruling that the more unfavourable treatment is not in itself discrimination. This interpretation directly contradicts the definition of direct discrimination, according to which a more unfavourable treatment based on protected attributes is always illegal discrimination, except in the very few cases listed explicitly in the PADA.

Ethnic origin

In January 2007, the Sofia District Court ruled against the Sofia Electricity Distribution Company for installing an electric meter box at inaccessible height, thus preventing the Roma plaintiff from visually controlling the electric meter readings. The court held it established that the plaintiff did not owe the unjustly calculated amounts

for electricity that he had not used. The decision is remarkable, both in terms of this unusual form of protection and with regard to some aspects of the anti-discrimination law stipulations.

In November 2007, the Supreme Court of Cassation (SCoC) confirmed a decision of the Plovdiv Regional Court. The decision of the latter was against the Plovdiv Electricity Distribution Company, on a case in which the court held direct ethnic discrimination against Roma comprised of a chaotic electricity supply regime for a period of three years, despite the fact that they were paying their bills. SCoC justly increased from BGN 3,000 (1,500 Euro) to BGN 5,000 (2,500 Euro) the compensation awarded by the district court.

The courts also ruled against suppliers of other public services, such as cafeterias, restaurants and swimming pools, deciding that denial of access to such services to Roma constitutes direct discrimination.

In 2007, different compositions of the Sofia District Court ruled on three lawsuits filed by the Citizens Against Hatred Coalition on Volen Siderov's extreme anti-minority hate speech. The three rulings are an example of cowardice, arbitrary denials to enforce the law against racial abuse and inducement to racial hatred. All three rulings dismissed the claims of the plaintiffs – individuals of Wallachian, Turkish and Macedonian ethnicity – with badly formulated formal grounds and restrictive interpretations contradicting the letter and spirit of the Protection Against Discrimination Act. In an unreasonable and formalistic manner, the judges held that: the infringement of the plaintiffs' personal dignity was not proven, regardless of the extremely humiliating content of Siderov's statements about minorities; inducement to discrimination could not be held as the addressees of Siderov's statements were not established (although the PADA does not require identification of the specific objects of inducement in order to prove it has occurred), regardless of the evidence that the statements were made to television and other wide audiences which makes impossible the personal identification of the people who have accepted them but pretty much ensures that a large number of people have accepted them; it was not proven that Siderov could influence his audience, despite the evidence of the media and other public dissemination of his statements, and despite the well-known fact that Siderov is an influential political leader and a member of parliament with considerable access to the media; documents originating from public bodies, such as the Council for Electronic Media, were considered unfit as evidence; it was impossible to make a conclusion on the overall idea behind the statements of the defendant, as only partial quotations were presented, etc. Some of the judges' findings directly contradict the PADA and/or common sense: it was not proven that Siderov's purpose was to humiliate the plaintiffs, despite the legal definition of abuse, which explicitly states that humiliation as a result, regardless of whether there was intent, is sufficient; it was not Siderov's aim to induce negative attitude to the minorities, he spoke against people from other countries and against the minorities, therefore there was no abuse and inducement against the unmentioned minorities; the minority origin of the plaintiffs was not proven, despite witness testimonies to that end. Overall, the rulings on Volen Siderov's hate speech were very weak, except for the first one, which was in favour of the Citizens Against Hatred Coalition. In this case, the court boldly ruled that hate speech is a violation of public interest.

In June 2007, the Sofia City Court (SCC) confirmed an unprecedented decision of the Sofia District Court in which the court had ruled against Bulgaria's Prosecutor's Office for racial discrimination against a Roma demonstrated by a prosecutor in the performance of his magistrate duties. The SCC held that dispositions issued by the prosecutor, containing insulting words about the Roma, are an indication of slighting and different treatment of this community. The SCC ruled that "every person of Bulgarian, Roma or other ethnic origin has the right to be treated by everyone, including by officials, without restrictions, […], with due respect to [his] person." In essence, the Prosecutor's Office was convicted of anti-Roma official hate speech by a magistrate. The plaintiff is a Roma whose brother died in an accident; the discrimination occurred during the investigation of his death.

Sexual orientation

In May 2007, the Sofia District Court refused to recognise discrimination in a lawsuit filed by a female inmate against the Prosecutor's Office for the dismissal of her application for release on parole, motivated explicitly with her "homosexual orientation". The court's decision is unjustified, as it dismissed the discrimination, albeit acknowledging that the prosecutor's grounds included the plaintiff's sexual orientation and that she has been working "willing and responsibly" while in prison, i.e. she meets the statutory requirements for release on parole. The court demonstrated a lack of understanding of direct discrimination – namely, that unlike indirect discrimination, it excludes in principle the possibility of justifying different treatment – and mixed it up with indirect discrimination. In contradiction to PADA, the court ruled that when different treatment is objectively justified, it does not constitute discrimination. Although it gave some correct interpretations of the principle of transferring the burden of proof, the court showed only partial understanding of this and applied it wrongly, holding that no evidence has been presented to justify the assumption that discrimination has occurred, regardless of the fact that the prosecutor had explicitly indicated the plaintiff's sexual orientation as grounds for his refusal.

Age

Different compositions of the Sofia District Court unjustly and unlawfully denied to accept that banks' general conditions that include a maximum age of 65 as a prerequisite for access to credit, constitute discrimination. One of the judges applied a restrictive interpretation of the definition of a person affected by discrimination, holding that the plaintiff (aged over 65) was not a victim, as he had never tried to obtain credit disregarding the general conditions that exclude him. In an unreasonable and unjust manner, the judge ruled that "the preliminary general restriction of the circle of potential recipients of […] goods and services is not discrimination". Unfortunately, the Sofia City Court confirmed this decision on the same grounds.

General deficiencies and qualities of case law

Some judges demonstrated a lack of understanding of the PADA's scope of application. They either interpreted the sample prohibitions of specific acts of discrimination – aimed to illustrate the content of the general prohibition of discrimination – as exhaustive and not covering any actions beyond those explicitly stated; or interpreted the key areas in which these illustrative prohibitions are foreseen as the only areas in which PADA is applied.

Some judges, for example from the Sofia District Court, demonstrated a lack of understanding of indirect discrimination, accepting that direct discrimination acts constitute indirect discrimination. The lack of understanding is focused on the "seeming neutrality" of the respective practice. Seeming neutrality is incorrectly interpreted as a lack of officially stated racist grounds for different treatment and not as equality of treatment without respect to protected attributes, which however results in disproportional effects on, or exclusion of, some groups. The judges thus demonstrated their incorrect understanding of hidden direct discrimination, i.e. the more unfavourable treatment on grounds different than the protected attribute that is in fact the real reason.

Some judges had a rigid and formalistic approach to the context of discrimination against some groups. Disregarding the well-known social realities, they refused to accept as evidence public facts reported by international and other specialised organisations. In one case, the Sofia District Court refused to accept such reports as relevant to the case, on the grounds that they had no weight as evidence according to restrictively interpreted obsolete rules that do not reflect the current realities and the need for common sense in ruling on cases. Other courts, such as the Plovdiv Regional Court and the Sofia District Court, accepted as publicly known and therefore not subject of being proven, that some neighbourhoods are populated by Roma only – a positive example of common sense in allowing facts of significance for a case.

The judges also committed violations of the PADA. In one instance, the Sofia District Court stated that non-profit legal entities need to be registered in public benefit to file discrimination lawsuits on their behalf in cases when the rights of many persons are affected. This restrictive interpretation is illegal, as the PADA does not require such formal registration. To have the right to an individual anti-discrimination lawsuit, the organisation is only required to work *de facto* in public benefit. Other courts, however, ruled in consistency with the PADA and allowed and adjudicated on lawsuits filed by non-profit legal entities without regard to their formal registration in public benefit (as stipulated in Section Three of the Non-Profit Legal Entities Act – NPLEA), including foreign non-profit legal entities that have no registration in Bulgaria. In some cases the courts also acknowledged the right of the non-profit legal entities to serve as assistants in lawsuits filed by victims of discrimination, in public interest, regardless of whether these entities were affected or not.

As a whole, the judges acknowledged the right of non-profit legal entities in public interest and of trade unions to initiate on their behalf lawsuits against discrimination of multiple persons, when the entities have no specific interest in this or when no specific victim has been established.

In violation of the PADA, the Sofia District Court denied in a case the right of non-profit legal entities to be constituted as an interested party in anti-discrimination proceedings. The court held that only victims can be constituted in this capacity. This illegal interpretation restricts the human rights organisations' access to lawsuits and is a direct violation of the letter and the spirit of the PADA.

On several occasions the Sofia courts held that the court as an institution cannot oblige a defendant in an anti-discrimination lawsuit to perform specific actions when it is established that his inaction constitutes discrimination. Such an interpretation restricts the scope of the possible protection, in contradiction with the explicit purpose of the PADA to make the protection effective.

Some judges demonstrated a lack of understanding of the important principles of transferring the burden of proof in anti-discrimination cases. In an instance, the Sofia District Court ruled that this principle is inapplicable to lawsuits filed not by victims of discrimination, but by non-profit legal entities in public interest. This narrow interpretation restricts severely the application of the transfer of burden of proof principle and contradicts directly the purpose of the law, in the interest of the public, to guarantee effective protection against discrimination. On the other hand, something positive – although not directly related to the transfer of burden of proof principle – is

that in this case the court ruled that when the alleged discrimination is due to inaction, it is not subject of being proven; the burden is on the defendant to prove that his actions were appropriate. Such an interpretation is in favour of the protection against discrimination, as it makes it easier for the party seeking protection.

Other courts also applied arbitrarily the transfer of burden of proof principle. Some accepted that facts have been proven that allow the assumption of discrimination in cases when the facts proven led to an unconditional conclusion and not merely to an assumption of discrimination. However, the Supreme Court of Cassation (SCoC) and some other courts ruled on adequate grounds with regard to meaning of the transfer of burden of proof. SCoC held that "given the statutorily defined shift of the burden of proof in establishing facts *that could lead to the presumption* that the plaintiff has been treated in a less favourable manner on the basis of one of the attributes under Art. 4, para. 1 of the PADA, it is sufficient for him to have proven the existence of facts justifying the legal presumption." This interpretation is completely in line with the purpose of the transfer of burden of proof instrument – to release the party claiming discrimination from the burden to prove it fully. Other courts, such as the Blagoevgrad regional and district courts, demonstrated understanding that the transfer of burden of proof principle requires the defendant to traverse the factual presumption of discrimination, arising if the plaintiff is able to prove facts that make such a presumption possible. The Sofia City Court (SCC), as well as other courts, interpreted correctly the facts that need to be proved by the plaintiff, in order for such presumption to occur, and namely: "The plaintiff should prove the discrimination element and the presence of other equal conditions for him in comparison to [another person whom the defendant has treated in a more favourable manner] under the same conditions." SCC correctly held that judgement whether the plaintiff has had a sufficient number of facts proven, in order for a presumption of discrimination to occur, is left to the court for every specific case. These interpretations were shared explicitly by the Sofia District Court in another case. Some courts, including SCC, demonstrated their understanding that the defendant needs to refute the presumption of discrimination by full and major proof, unlike the proof required by the plaintiff to create a presumption, which is not full.

On the other hand, some judges continued to rule that the transfer of burden of proof means that the defendant must prove negative facts, in order to prove his innocence. This interpretation shows a lack of understanding of the transfer of burden of proof principle. The defendant does not need to prove negative facts but to prove the existence of a legal reason for treating the plaintiff in a more unfavourable way; such reason may not have anything to do with the gender, age, disability, sexual orientation, religion or ethnic origin of the person. This is the only way for the defendant to refute the court's presumption that the more unfavourable treatment is due to one or more of these protected attributes and that discrimination has occurred. Should the defendant be unable to prove the existence of such a legal reason, under the transfer of burden of proof principle the discrimination would be established only on the basis of the presumption provoked by the plaintiff. Some courts, such as the Blagoevgrad and Sofia district courts, demonstrated correct understanding of this.

Despite the errors made by some judges in the interpretation and the application of the transfer of burden of proof principle, which are normal in the course of the development of this new legal institute, it should be noted that the judges are consistent in paying attention to this institute and discussing it in their rulings; instead of disregarding it, they correctly perceive and treat it as a significant element of the anti-discrimination protection.

One good aspect is that the courts consistently acknowledged the employers' responsibility for acts of discrimination by employees, even when the employer has not ordered such an act and regardless of the position of the person performing such acts.

Another good aspect is that the courts consistently interpreted the PADA as special legislation compared to the laws that regulate the different areas in which discrimination is manifested. What this means is that they recognize the supremacy of the PADA in comparison to other laws, i.e. it is replacing these laws and is applied when these other laws contradict it. [27] This is good because the PADA contains the most adequate norms with regard to protection from discrimination, while the other laws that generally regulate different areas of public life, are often inconsistent with its norms, stipulate restrictions and even include directly or indirectly discriminatory texts. By recognizing PADA as a special law, the judges apply its more progressive texts that the more restrictive texts of the other, contradictory general laws, which benefits the rights of the discriminated persons.

Unfortunately, a significant number of judges have still not learned the PADA rule that the parties in anti-discrimination cases are exempt from fees and charges. A series of decisions violated this special rule, to the detriment of the party seeking protection against discrimination.

Some judges showed a lack understanding of the institute of comparison with other persons in a similar situation, as a central element of direct discrimination. For example, a constitution of the Plovdiv Regional Court refused to acknowledge discrimination in the delivery of electricity to two residents of a Roma neighbourhood.

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[27] *As per the lex specialis derogat legi generali principle (the special act repeals the general one).*

The court ruled that they are not subject to protection from discrimination, as they were in default on their contracts with the electricity distribution company. The court never made a comparison between the treatment of these two persons in default and the treatment of other residents, also in default, living in non-Roma neighbourhoods. The lack of such comparative analysis makes the refusal to acknowledge discrimination arbitrary.

Another weakness of case law was that the Supreme Administrative Court (SAC), as well as some other courts, demonstrated incorrect understanding of its powers under the PADA in judging the necessity of employers' requirements with regard to the hiring of staff. On a complaint for direct discrimination in access to work, SAC ruled that the job description could not be subject to verification by court. In reality, the PADA requires the court to determine whether the requirements of the employer are really necessary, for the purposes of establishing both direct and indirect discrimination. In the first case, the judgement on the necessity of the requirements shows whether these requirements are the real legal reason for the more unfavourable treatment – in which case there is no direct discrimination – or whether they are just pretext that covers the real reason – one of the protected attributes – in which case there is discrimination. In the second case, the presence of necessity for a neutral, from the point of view of the protected attributes, requirement that reflects disproportionally worse on some groups defined by protected attribute, depends on whether the disproportion is objectively justified or whether it constitutes indirect discrimination as a violation of the law. Therefore, the court's refusal to review the issue of employers' requirements in effect bars the road towards protection from both direct and indirect discrimination.

On the other hand, the Sofia District Court demonstrated in an instance understanding of the significance of the specific necessity of undertaking measures that discredit persons or groups on the basis of protected attributes. The court analysed this necessity and established presence of discrimination, as it found that there was no real necessity. The court correctly ruled that the necessity needs to be proved by the defendant, and that failure to do so would mean that the discrimination is established only on the basis of the unproven necessity of the discrediting measures.

Overall, the case law was marked by both deficiencies and adequate decisions. It still has a long way to go before all errors are eliminated and optimal application of the PADA is achieved.

The citizens are also far from understanding the PADA and its stipulations to a sufficient extent. They do not differentiate between discrimination as a term and other violations of the law or deficiencies. Most of the lawsuits were not filed individually by citizens but with the support or on behalf of human rights organisations or community service organisations. No lawsuit has been filed by, or with the assistance of, a trade union – a serious deficiency of the trade unions. Inadequate understanding of the PADA stipulations marks the few lawsuits filed by individual citizens. First of all, the citizens do not understand the main element of discrimination – the comparison to someone else in a similar situation – and the related key issue of the protected attribute as a reason for worse treatment and a major difference between the victim and the other person in a similar situation used for comparison. Another thing that the citizens find difficult to fathom is the meaning of protected attribute under the PADA. For example, some of them complain from discrimination because transport prices for their destination are higher – something that is very far from the purpose of the law, which is to counter the system models of exclusion and suppression of people on deeply personal grounds, such as gender, race, sexual orientation, age, religion or disability. Adequate public understanding of the PADA and its capability to effect public change is to develop in the years to come.

10. Right to Asylum, Freedom of Movement

For 13 years the BHC has been monitoring the implementation of the right to asylum and state policy and practice in this field. The focus on this right is due to its special status as a fundamental human right regulated and protected by Art. 27, para 2 of the Constitution of the Republic of Bulgaria. According to the Constitution, the Bulgarian state assumes as a major responsibility the obligation to provide protection to foreigners persecuted for their beliefs or their activity in defence of internationally recognised rights and freedoms. On the other hand, the foreigners – as non-citizens – are subject to a series of limitations in exercising their rights and are therefore always in a more vulnerable situation that the citizens in terms of the scope and the protection of their rights. Combined, these circumstances define the interest and the attention to this circle of rights and legal subjects and the monitoring of the state protection mechanisms, as well as the organisation of methods for the provision of independent legal protection to those seeking protection, the refugees and the foreigners who have been awarded humanitarian status.

Since the main group of persons under monitoring is by definition comprised of foreigners, the general national legal regime for the foreigners is also having an effect on the opportunities for these people to exercise their personal rights. The years of monitoring this regime provided undeniable proof that it suffers from a restrictive and discriminatory approach to the regulation of rights and the legal means of their protection. This

created a need for review and analysis not only of the problems in the context of the migration issues and processes, but also of the national immigration policy and the restrictions to which the foreigners who are not citizens of the European Union are subjected. This need was furthermore justified by the complete submission of the Bulgarian policy in every aspect to harmonize the national legislation with the Community's norms, rules and practices. This has resulted in a progressive strengthening of state control on the cross-border movement of people and in restricting immigrants' access to the labour market. The monitoring in this field indicated a strong misbalance between the need of such control and the limits of its practical implementation and exercising which restricts not only refugees' access to the protection they seek but in more general terms imposes restrictions on the right to free movement and choice of domicile of each person. The trend towards making these restrictions a national policy and practice in detriment to the human rights of the migrants – immigrants and emigrants – resulted in the expansion of the BHC activities to cover the field of migration in Bulgaria.

In 2007 the right to asylum in Bulgaria was determined by the above-mentioned immigration control and border protection measures, a task assigned to Bulgaria as a priority in the performance of its duties as external border of the European Union. This is why the access to the country's territory for foreigners seeking protection from persecution and restriction of their fundamental rights was seriously hindered. Despite this, the measures aimed at guaranteeing access to the territory and to a procedure for the awarding of status and the provision of protection, which the BHC and the other non-governmental organisations working in this field developed and which introduced in practice jointly with the state refugee authorities, generated positive results. For the first time since 2002, the number of foreigners seeking protection who have been granted access to the territory and to procedure, has grown compared to previous years that were marked by a steady and dramatic decrease. In 2007, 975 persons from 44 countries sought asylum in Bulgaria, compared to 639 persons from 29 countries in 2006, 822 persons from 38 countries in 2005, and 1,127 persons from 42 countries in 2004. This means that the number of persons who were given access to territory and protection has grown by 52% over 2006.

Bulgaria's accession to the European Union and the introduction of statutory mechanisms for the implementation of the *acquis communautaire* in the field of asylum required a dynamic legislative process. Despite the serious amendments to the Asylum and Refugees Act in 2006, a proposal for new and significant amendments and supplements to the existing texts was made in 2007. The most important change included the introduction as starting and covering almost all cases of the procedure for determining the country responsible for examining asylum applications under Council Regulation (EC) No 343/2003 and Commission Regulation 1560/2003, more popularly known as Dublin II proceedings. This resulted in a significant extension of the time in which the asylum seekers get access to the procedure on the essence of their asylum application within the deadlines stipulated by the above-mentioned European regulations. Overall, this induced a significant increase in the deadlines for the whole procedure, which in any case is not in the interest of the asylum seekers, as it extends the time in which they get a final decision on their status in Bulgaria and postpones the achievement of more sustainable solutions, such as integration, resettlement or voluntary repatriation. Another problem arising from the extended final solution deadlines is the dependence and the institutionalization that the asylum seekers develop and which hinders the success of their subsequent integration in society.

The amendments and supplements to the Asylum and Refugees Act, adopted on June 14, 2007, introduced the following norms to the existing texts:

- Art. 8, para. 2-8, Art. 9, para. 2-5 and Art. 13, para. 1 and 2 transposed provisions of Directive 2004/83/EC în the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
- The procedural Directive 2005/85/EC was reflected in Art. 6, 13, para. 1, items 8, 9, 10, 13 and 14 and para. 2, Art. 40, 41, 42, 43, 61, 62, 63, 63a, 68, Art. 72, para. 1, items 2-3 and Art. 77 – 83 of the Act;
- Amendments for transposing Directive 2006/83/EC on family reunion were effected in Art. 34, Art. 3-7 and Art. 39a;
- The provisions of Directive 2001/55/EC on temporary protection were reflected in Art. 2, para. 2, Art. 11 and Art. 39 of the Act;
- Directive 2003/9/EC on laying down minimum standards for the reception of asylum seekers was transposed in Art. 29, Art. 30a, Art. 32, 33, 80, 81 and Art. 82 of the Act.

The BHC lobbied and achieved the withdrawal of some questionable texts in the proposed amendments and supplements to the act. Fore example, the proposed text of Art. 4, para. 4 and Art. 67, para. 3 violated the principle of "prohibition of return" as stipulated by Art. 33 of the UN Convention relating to the Status of Refugees of 1951, as well as the expansion of the exclusion clause under Art. 1c of the same Convention in the proposed text of Art. 15, para. 5. The text of Art. 92, which significantly restricted asylum seekers' right to free trial, in contradiction to the *cautio judicatum solvi* principle, is

still a cause of concern. As a whole, the law did not introduce all provisions of the above-mentioned European acts; instead, it was chosen that a general referral norm be introduced in §1a of the Supplementary Provisions of the act. This approach is somewhat dubious in terms of its legal relevance and correctness.

With regard to the delay of the procedure, due to the Dublin proceedings, the state found it almost impossible to meet the need of places for the accommodation of newly arriving asylum seekers. An additional hindrance was created by the still not completely terminated practice of registering second asylum applications. For this reason, in order to meet their obligation not to return asylum seekers to the countries they are fleeing, the Border Police bodies – who are statutorily allowed to detain foreigners breaching the border and without identity documents for only 24 hours – began to refer the asylum seekers to the Special Home for Temporary Accommodation of Foreigners (SHTAF) in Busmantsi. It functions as an administrative police detention for illegal aliens prior to their deportation and is in the jurisdiction of another police body, the Migration Directorate of the National Police Service of the Ministry of Interior. This required the creation of mechanisms to guarantee that the asylum seeking foreigners transferred from the border will not be deported but will get access to registration of their asylum and release applications and will be accommodated in refugee registration and accommodation centers (RACs). For this reason, apart from monitoring the detention facilities at the borders, it became necessary to sign an agreement with the Migration Directorate, in order to guarantee asylum seekers accommodated in SHTAF the right to access to procedure.

The refugee procedure was applied without any significant difference in comparison to the practices and approaches of previous years. As a whole, it was consistent with the law. The administration's refusal to start recording by technical means of the interviews of asylum seekers remained a major issue. Apart from serving as a guarantee for an objective and comprehensive procedure, this would help reduce, and to a great extent prevent, corruption and subjectivism in making the decisions. It should be noted that the persistent refusal to introduce recording by technical means as a guarantee against corruption and unconscientious performance of official duties, is a cause for certain doubt with regard to the administration's willingness to effect a positive change. On the other hand, the monitoring by BHC lawyers of all procedures held by the State Agency for Refugees provides an opportunity to closely track the administrative practices and provide recommendations for the elimination of the deficiencies established. The refugee status awarding rating remains low, a mere 1.3% or 13 out of 975 new asylum seekers. 322 were granted humanitarian status, which is 33%, making the awarding rating 34.3% of a total of 975 applications submitted in 2007. Overall, it was higher than the 13.9% in 2006.

The freedom of movement, established in Art. 13 of the Universal Declaration of Human Rights, and Art. 12 of the International Covenant on Civil and Political 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 his/her country and to freely return to it. In the national legislation, this right is guaranteed in Art. 35 in relation with Art. 27, para. 1 and Art. 26, para. 2 of the Constitution. As in previous years, in 2007 one of the main problems with regard to human rights was the way the Migration Directorate of the Ministry of Interior conducts the deportation procedures of illegal aliens. The average duration of the involuntary stay (detention by administrative procedure) at the special homes for involuntary accommodation of foreigners varies between three and six months; however, the special home in Busmantsi is currently occupied by some foreigners whose police detention has continued for over 24 months. The most dramatic cases of long-term detention also demonstrated apparent inaction on behalf of both state services, while the foreigners continue to be deprived of their right to liberty and freedom of movement, in violation of Art. 5f of the European Convention on Human Rights. The court continued to repeal involuntary placement orders on the grounds of continuous detention. In 2007, the court repealed the involuntary placement of Abdul Hakim Mohamed Zeituni, without citizenship (administrative case № 2189/07 of the Supreme Administrative Court), of Nguen Van Than, citizen of Vietnam (administrative case № 11896 of the Supreme Administrative Court), of Obaidula Hairhua, citizen of Afghanistan (administrative case № 6122/07 of the Supreme Administrative Court).

The interpretation and the application by the immigration police of the provision of Art. 26, para. 2 of the Foreigners Act was another problem with regard to migrants' human rights in 2007. Under this text, extension of a long-term stay permission is denied to foreigners who have spent less than 6 months and 1 day in the country during the previous year. As of January 1 2007, this provision should not be applied to foreigners married to Bulgarian citizens, insofar as members of the family of citizens of the European Union they are subject to the provisions of the special Entry and Leave of the Republic of Bulgaria by Citizens of the EU and Members of Their Families Act. Therefore, the rule under Art. 24, para. 3 of this act should be applied to them, i.e. in case of absence from the country for more than two consecutive years. Nevertheless, the bodies of the Migration Directorate continued to apply the old provisions for foreign spouses of Bulgarian citizens who are not EU citizens. This is an openly discriminatory approach which, apart from a violation of the national legislation, also constitutes a violation of Art. 8, para. 1 of the European Convention on Human Rights, insofar as it is inadmissible infringement of these foreigners' privacy and family life and a separation of families that have existed for years.

In 2007, the European Court of Human Rights in Strasbourg ruled in a decision against Bulgaria for a violation of the right to privacy and family life of a foreigner whose residence permit has been revoked and who has been ordered to leave the country. On January 11, 2007, the Court announced its decision on *Musa and Others v. Bulgaria*. In its ruling, the Court once again criticized the impossibility foreigners whose residence permit has been revoked under the Foreigners in the Republic of Bulgaria Act on the grounds of being a threat to national security, to appeal this decision to the courts. In the specific case, the Bulgarian courts had refused to review the complaint and had dismissed it in 2001 as inadmissible. The Court pointed out that although it had already ruled that such a practice is inconsistent with the standards of the Convention, the Supreme Administrative Court did not bring its practice in compliance with the ruling until 2003. Therefore, in 2001 judiciary control over the order for the revocation of the residence permit of the plaintiff was not possible. For this reason, the Court found a violation of the Convention.

11. Discrimination of People with Mental Disorders in Institutions

In 2007 the Mental Health Programme, which was initiated in 2005 as a joint initiative of the BHC and the Mental Disability Advocacy Center (MDAC) in Budapest, continued to work under the project Litigation on Behalf of People with Mental Disabilities. During the year, the programme found many unsolved problems in the area of the rights of institutionalized persons with mental illness and developmental disabilities. As in previous years, in 2007 the main political documents that were to be implemented included the Mental Health Policy and its Action Plan 2004-2012 (both adopted in 2004).

The declared will to develop mental health strategies and policies, the inclusion in these policies, strategies and actions plans of globally recognized models for the protection of the rights of people with mental disorders and severe developmental disabilities did not produce the desired results. Worldwide, the efforts to protect this group are concentrated on creating alternatives to the existing stigmatizing institutional models. For another consecutive year, a great discrepancy between declared intentions and actual efforts occurred in Bulgaria. As a natural result of this, the situation of people in institutions, such as homes for adults with mental disorders and homes for adults with developmental disabilities, not only did not change, but even worsened to some extent. Efforts to deinstitutionalize people with disabilities are sporadic and do not result in significant changes. One of the possible reasons for this is the lack of understanding of the need of proactive efforts in this respect and the lack of respect to the rights of the people with severe disabilities.

The lack of coordination between the executive power at central level and that at local level is critical. The municipalities, the mayors, the municipal councillors and the regional governments rarely have adequate understanding of the severity of the problem and the need for systematic efforts to solve it. The preference at local level is to have the people with severe disabilities in isolation, invisible to the public. This attitude has different manifestations in different communities but as a whole leads to the same result – huge barriers before the people who have assumed the heavy burden of providing services to the people with severe disabilities in the community (most often in the form of protected homes). Exercising economic pressure and putting in unfavourable position the organisations undertaking actions to provide protected homes are the softer methods of hindering the deinstitutionalisation process. Such a case occurred in Varna, where a protected home was put at risk of closure due to the economic requirements the Municipality imposed on the organisation, a lack of understanding of the activity and the service and a lack of adequate support. The direct blocking of the efforts of persons and organisations trying to provide such service is another phenomenon that occurs often. For example, the BHC was addressed by a woman who had given her house in the vicinity of Gabrovo to a non-governmental organisation, for the purposes of a protected home for people with mental disorders. Not only was not the idea backed by the local government but it tried to boycott it openly in any way possible. The opposition varied from refusal to submit for review the proposal for the establishment of the protected home as a social service, to protests and collection of signatures against the organization and the people with disabilities organized by the mayor. Given this problem, a letter was sent to the Council of Ministers with a request for the termination of the discrimination practices and for support to the idea. In its reply, the Council of Ministers did not provide any specific guidelines for the resolution of the problem. On the contrary, the Council of Ministers found no grounds to question the results from the requests sent to the respective municipal authorities. The letter quoted an opinion, according to which "the new social services requested for 2007 were a priority and existed in a sufficient number[28], which is why a decision was made to have the "protected house" service apply for the 2008 or 2009 budget year". At the same time, CoM accepts without any criticism and even replicates an opinion of the mayor of Gabrovo which states: "…notes that there are public attitudes that are not subject to regulation in any way and one of these is the negative attitude of the people to persons with mental disabilities". By the end of 2007, despite the efforts of the non-governmental organisations

[28] *In 2007, this municipality did not create any new service for people with mental illness or developmental disabilities.*

involved, the creation of a protected home was not even brought up for review. This case illustrates clearly the lack of political will to solve the problems faced by the people with mental disabilities, especially at local level, as well as the helplessness of the central government to apply in practice the policies and action plans it has adopted.

To make the picture of the deinstitutionalisation process even clearer, all we need to do is indicate one of the very few examples of protected homes that were created over the past year. The "protected home" service was created at the largest psychiatric hospital in Bulgaria, named after Dr. Georgi Kisyov, in Radnevo. The housing is within the hospital and has 100 beds.

Last but not least, it should be noted that until now the protected home service is available to people in a relatively better condition. The service is practically inaccessible for people with lasting and severe mental and intellectual disabilities.

Many of the people in institutions are deprived of their legal capacity (placed under guardianship). Usually, persons under guardianship and accommodated in institutions for long periods of time usually have appointed guardians either relatives who are often not interested in them, or staff of the institution, which constitutes an obvious conflict of interest. As all people in the institutions are extremely dependent on the care they get at the institution, they have no mechanism to deal with any of the problems they face. Even the presence of caring relatives is not a guarantee that their interests will be protected in an adequate way. Adequate health services are lacking. There are no social programs that could help the people in the institutions restore their social skills, some of which they have lots not due to their illness but because their needs are so severely neglected by the institutions. Even when such programs are being implemented, they are far from sufficient and often formalistic. The practice of having people from the institutions visit cultural events or go out for excursions is positive. However, such opportunities are not available to all persons in the institutions. People in institutions state that these events are often used to punish those who the staff believes have not been sufficiently obedient over a given period of time. They are barred from participating in such events.

During site visits to social institutions outside the community, the BHC researchers encountered many complaints of punishment imposed by staff for behaviour undesirable by staff. Apart from deprivation of social opportunities, involuntary heavy labour, physical punishment and humiliating treatment are also used. Such punishment is also applied to people who have left the institutions without permission.

In 2007 BHC was informed by many people with disabilities and their relatives about violence exercised at social institutions and psychiatric hospitals. The victims are dependent on the perpetrators and fear future abuse, which poses a great problem to the effective protection of these people. The lack of effective investigation of the much more grave cases that have resulted in death, the depreciation of the sufferings of people with mental problems, make the fears of these people and their relatives very adequate to the reality.

In 2007 BHC did not observe any change in the attitude of the prosecution, investigation and courts to the protection of the right to life of the people in institutions and medical facilities. No progress was seen with regard to the effective investigation of death cases. Terms such as death caused by negligence of duties on behalf of the staff of institution and/or due to insufficient staff are still not recognized as reasons to solicit responsibility. For example, in early 2007 one of the women at the social home for adults with developmental disabilities in Radovsti left the home under unclear circumstances. The home's administration did not inform her relatives for several days. In the end, when they were finally notified and thanks to their proactiveness and insistence, a search was effected and the woman was found dead. According to the relatives, there is ample evidence that the victim was medically neglected and abused, including sexually, when she was alive. The lack of care for the victim resulted in her freezing to death. However, all this was insufficient for the prosecutor's office to see that a crime had been committed against the victim and the case was closed without an effective investigation.

The people with mental disabilities often fall victim to various types of property fraud and abuse. Some of them are placed under judicial disability and sent to a social institution outside the community by relatives, with the clear purpose of robbing them. In other cases, similar abuse is performed by different persons against people with mental disabilities facing a crisis, with the former taking advantage of the placement of the latter in a psychiatric facility by court order. Usually, such cases cannot reach the prosecutor's office due to the victims' inability to initiate adequate actions to protect themselves or due to their dependence on the perpetrators of the fraud.

No programmes for the delivery of services to psychiatric patients in all multi-profile hospitals were elaborated, coordinated and implemented. To the contrary, the psychiatric ward in the multi-profile hospital in Pazardzhik was closed. The citizens were forced to seek treatment only at the specialized hospital. This act of the municipal authorities caused mass protests in the city. The citizens of Pazardzhik collected signatures in support of their request for better care, the overcoming of the stigma and the provision of the same treatment at the multi-profile hospital that used to be provided until that moment. The signatures collected were sent to the Municipality and to the Ministry of Health. The replies of the institutions demonstrated once again the lack of coordination between the local and the central government and the lack of

mechanisms that could ensure in a reliable way that human rights and the psychic health policy are respected at the psychiatric clinics.

The people suffering from mental illness and placed in psychiatric clinics are by definition deprived of effective access to court during their stay at the psychiatric clinic. Placement in a psychiatric clinic may be voluntary, compulsory or involuntary. In all cases, the access to court is non-existent. In case of informed consent for treatment, it is assumed that the treatment and the stay at the psychiatric clinic are voluntary. However, there are many cases in which the so-called informed consent is obtained by manipulation, violence or other inadmissible means. Detention at a psychiatric clinic and treatment in case of fictitious, null or voidable[29] consent of the patient is one of the most severe violations of the right to effective court protection of people with psychic problems. Obtaining consent for treatment in this is bending the rules of the Health Act with regard to identifying the need for treatment and determining its duration and form.

A person detained at a psychiatric clinic as an emergency case has no access to the guaranteed right to contact a lawyer and/or relative, to immediately consult another doctor, or to keep his or her personal items and valuables. For emergency psychiatric conditions, there is an obligation to notify the court under Art. 154 of the Health Act; however, there are no rules that guarantee access to protection to a person admitted to a psychiatric clinic as an emergency case. The practice indicates that such a person may be detained for more than a week, subjected to drug treatment and deprived of any opportunity to file a complaint with a court for a violation of his or her rights. The lack of adequate norms guaranteeing the rights of the people in psychiatric clinics allows for severe arbitrariness and abuse in psychiatric assistance. As a result, on one hand, the rights of the individuals detained in psychiatric clinics are violated and, on the other hand, persons who really need emergency assistance do not get it.

Problems with the right to access to courts are also observed in cases of compulsory treatment. In the past year the BHC was involved in less cases of compulsory treatment of persons under the Health Act. At the same time, many observations were made that confirm the conclusions from previous years. The court protection of people with mental illness in cases of compulsory treatment is formalistic and is rarely provided by lawyers who possess the knowledge of mental health issues and the specific legal norms. What is even more worrying is that in a large number of cases the lawyers on such lawsuits are not simply being formalistic in their approach to the defence of their clients, but presume that if a compulsory treatment procedure has been initiated then the result must be placement in clinic.

Once the court procedure for the placement of the person for treatment is over, the opportunity to access the courts is gone. In the cases of detention for treatment in a clinic there are no rules for confidentiality of correspondence, including for the right to have correspondence, rules for signals and complaints of violence or abuse in treatment facilities. This lack of a regulated opportunity for the persons admitted for treatment in psychiatric clinics results in a lack of mechanisms for the protection of their rights and interests during their stay at the medical facility.

In 2007, the BHC, together with the Open Society Institute Mental Health Initiative, Budapest, conducted monitoring of the services that are being developed in the community for children and adults with mental disabilities: 19 day centres for children and adults were visited (approximately 500 clients), as well as 17 protected homes (120 clients) and two rehabilitation and social integration centres (approximately 60 clients). The development of these services should provide an alternative to the institutional care for people with developmental disabilities and mental illnesses and support their full integration and participation in the Bulgarian society. Despite the fact that over the last three years the efforts of the Bulgarian authorities and of the European funds were targeted on these services, the monitoring found out that they do not provide a real alternative to the institutional care; as a concept, they do not lead to effective deinstitutionalisation, do not meet the individual needs of the clients and cannot provide quality care. This is so because social, rehabilitation and educational services are being developed without preliminary needs assessment, without understanding of the desired result, without the involvement of the local authorities that often are the managers of such programs, without respect to the opinions and the suggestions on the clients, and without skilled staff. In reality, there is no competition between the services and the momentum of transforming this model of care into an institution is strong. The number of services is insufficient; they are available to a still very small number of people with mental disabilities while the costs are higher, as new and modern buildings are often built for their development that local authorities later find impossible to maintain. The staff are not more skilled than those at the institutions and also demonstrates a discriminatory attitude to the clients.

A worrying fact is that in most protected homes the monitoring established evidence of incidents that had resulted in serious violations of clients' rights: a fire that resulted in returning a client to the institution; demonstrative severe poisoning with neuroleptic drugs of another client; escape and rape of a women that ended with the complete removal – without her knowledge – of her reproductive organs. The protected homes are not man-

[29] *These terms are used in relation to the stipulations of the Obligations and Contracts Act with regard to establishing invalidity of consent.*

aged or inspected periodically by specialists. The day centres confirm the discriminatory model of raising and educating children with disabilities away from their coevals and from skilled staff, without any idea of integration in mainstream schools. The staff of the alternative services are generally not aware of the current state policy, legislation and practices concerning the people with mental disabilities.

People with mental disabilities have an even lower chance of normal life in the community because of the lack, with a few notable exceptions, of alternative services available to them. Outside of Sofia, there is only one protected home and two day centres that such people can use.

The lack of a long-term vision and political will to develop effective and well-functioning services are still the main reasons behind the slow deinstitutionalization process. The ministries and the agencies responsible for the creation of services for people with mental disabilities have no expertise, will and understanding of what community services are needed that could guarantee that the fundamental rights of the people with mental disabilities will be respected and that their needs will be met. An example to this end is the home for children and youth in the village of Mogilino, which became famous in September, 2007 through the BBC documentary "Bulgaria's Abandoned Children". The state assumed no responsibility for the deplorable conditions in this home. The development of services for the integration of the children was left to a group of NGOs with expertise in this field. Measures for the deinstitutionalization of children with mental disabilities by the state are not being undertaken.

12. Women's Rights and Gender Discrimination

Political will for the implementation of a clear, continuous and consistent policy on women's rights and gender equality continued to be lacking in Bulgaria in 2007. No funds were, again, allocated for such a policy in the 2007 national budget. This is why the awareness and training campaign had to be once again initiated and managed by the non-governmental organisations. Despite the fact that in 2006 the Equal Opportunities for Women and Men Bill was submitted to the National Assembly, it is still under review. The Bulgarian Gender Research Foundation announced that there is a probability that the parliamentary committee responsible for the review of the bill may have started work on a new gender equality bill. This new text, unlike the previous one, was to provide for the creation of a special body with the Council of Ministers that would implement the gender equality policy. By the end of 2007, such a bill had not been submitted to the National Assembly.

The state policy on domestic violence issues was much more proactive and responsible. 2007 was marked by the Council of Europe's campaign against violence against women, including domestic violence. In this respect, the Ministry of Labour and Social Policy, the coordinator of this campaign for Bulgaria, created a work-group comprised of representatives of governmental and non-governmental organisations; a plan on combating violence was adopted in implementation of the Ministry's obligations under the Prevention and Protection from Domestic Violence Program.[30] The Methodological Guidance for Police Actions in Domestic Violence Situations were published in the beginning of the year, national and regional coordinators for domestic violence were defined and a database of violence cases was initiated.

There is a certain progress in the work of the court as well, especially with regard to the issuing of immediate protection orders, which creates greater guarantees for the life and the health of the victims and their children. This year the non-governmental organisations once again reported an increase in the number of people who addressed them for help on domestic violence cases. The statistics of the Conjugal Division of the Sofia District Court for 2007 shows that 316 lawsuits were initiated under the Domestic Violence Act; of these, 91 were terminated (mostly withdrawn), 20 were dismissed, and the remainder ended with the issuance of orders. For the same period, 132 domestic violence lawsuits were filed in Plovdiv: 92 have been completed, 50 were terminated by request of the plaintiff, and 32 final protection orders were issued by November, 2007. 48 lawsuits were filed in Pernik in the first ten months of the year; 32 orders were issued, 31 of them for immediate protection. The court and the police work the best in places with functioning non-governmental organisations in the same field. Unfortunately, the amendments to the legislation needed to make its application more effective have not been effected. The main deficiency of the law continues to be the lack of an explicit text in the Penal Code containing penalties for failure to implement a court protection order. The shelters, 24-hour hotline and other activities for domestic violence victims, included in the program, are still being provided completely and only by non-governmental organisations at their own expense, through the already functioning centres for support to the victimized women and children.

With regard to the state policy on combating the sexual exploitation and human trafficking, the non-governmental organisations reported the existence of resolve on behalf of the Commission on Combating Human Trafficking to adopt and really implement the human traffick-

[30] *See Human Rights in Bulgaria in 2006, Annual Report of the Bulgarian Helsinki Committee, March 2007, available on www.bghelsinki.org.*

ing prevention and combating plan. Bulgaria was among the first ten countries to ratify the Council of Europe's Convention on Action against Trafficking in Human Beings[31], which is in force for the country since February 1 2008. This is the first European convention in this area to become effective. The convention includes measures not only for the prevention of human trafficking, but also for the prosecution of traffickers and for the protection of the victims. The Commission on Combating Human Trafficking's plan calls for achieving compliance with the convention at local level. However, the local commissions for combating trafficking, as required by the Combating Human Trafficking Act, have not been formed yet, although there are serious talks about the initiation of the first five. The temporary shelters and the protection and assistance centres for human trafficking victims have not been created yet.

The non-governmental organisations note that the media continue to create the image of the woman in the light of the gender stereotypes. The woman is represented as the object of men's sexual desires and in an unequal position in family and society.

13. Rights of Children in Specialized Institutions

In 2007, the BHC continued to monitor the status of the rights of children in specialised institutions in Bulgaria. Since January 2007, all 86 homes for children deprived of parental care, aged 7 to 18, were decentralized. Their management was transferred to the municipality, but the financing remained within the state, on the basis of a special standard. This step was not well-thought and had a negative effect on the care for the children. The municipalities were not ready to start managing the homes, much less to lead the reform towards deinstitutionalisation. There were problems with the funding and with the transfer of the ownership, which did not allow the municipalities that could improve the conditions in the homes to do so. The staff was negatively affected by a change in their salaries and was even less motivated to provide quality care. The system of homes for children deprived of parental care does not offer any opportunities to the children that come of age or to the staff. In the meanwhile, despite all the public talk about deinstitutionalisation, children are still being placed in these homes, as this is the only measure that can give them protection since the alternative services are inadequate in number and quality. The quality of care remains low due to the lack of political will for the implementation of an active and effective policy in support of the families of these children, aimed at prevention of their abandonment, and due to the lack of awareness on behalf of the competent authorities about the effects that life in a home has on these children.

The 32 children's homes for medical and social care, which accommodate children aged 0 to 3, are the most conservative and have not even initiated a dialogue for reform. They are still subordinated to the Ministry of Health and still admit the greatest number of children. No reasonable efforts are being made to prevent the abandonment of children after their birth, in order to narrow the way to all children's institutions. The chances for national and international adoption of such children are even lower, due to the cumbersome procedure for deprivation of parental rights, the slow work of the overworked social workers at local level, and the lack of transparency in the operation of the International Adoption Board.

The homes for children with mental disabilities were the focal point of the BHC human rights protection activities, as they were and still are in a grave condition. These homes are located in villages, have no trained staff, access to quality medical services, education and socialization. They were the first decentralized children's institutions, which helped preserve their status quo in the four years after their management was transferred to the municipalities. The most vulnerable children are living in these homes. By actively helping the BBC to film the documentary "Bulgaria's Abandoned Children" on location in such a home in Mogilino, the BHC managed to raise the issue of the total lack of care and of the need of bold reforms to ensure respect of the fundamental rights of the children in these homes. The film challenged the public opinion and a coalition of non-governmental organisations was formed for the first time, which reached agreement with the government for real deinstitutionalisation of the children from the home in Mogilino. Unfortunately, despite the international pressure and the wide discussions about the homes for children with disabilities, the Ministry of Labour and Social Policy continues to deny the problem with these homes and does not allocate financial, human and expert resources for an in-depth analysis of the situation of the children in the homes, for a needs assessment and for the delivery of comprehensive services for their equal integration in society.

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[31] *Bulgaria signed the Convention on November 22 2006 and ratified it on April 17 2007.*

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