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List of abbreviations

BGN – Bulgarian lev(a); 1 BGN = 0.51 EUR
BHC – Bulgarian Helsinki Committee
BIRP – Bulgarian Institute for Relations between People
BOC – Bulgarian Orthodox Church
CCP – *Code of Civil Procedure*
CoE – Council of Europe
CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC – Committee on the Rights of the Child
ECHR – European Convention on Human Rights
ECtHR – European Court of Human Rights
EMA –Electronic Messages Act
GDEP – General Directorate for Execution of Penal Sanctions
IDF – investigation detention facility
JDA – *Juvenile Delinquency Act*
MDAC – Mental Disability Advocacy Centre
MLSP – Ministry of Labour and Social Policy
NCCEII – National Council for Cooperation on Ethnic and Integration Issues
PADA – *Protection against Discrimination Act*
PADC – Protection against Discrimination Commission
RDA – *Religious Denominations Act*
RTA – *Radio and Television Act*
SAC – Sofia Appeal Court
SCC – Supreme Court of Cassation
SANS – State Agency for National Security
SAPC – State Agency for Protection of Children
SDC – Sofia District Court
SSA – Social Support Agency
SSM – Special surveillance means UMO - United Macedonian Organisation
SSMA – *Special Surveillance Means Act*
UMO – United Macedonian Organisation

Introduction

The present submission is a work of the Bulgarian Helsinki Committee (BHC), an independent non-governmental organisation advocating for the protection of human rights - political, civil, cultural, and social. BHC was established on 14 July 1992 with the goal to promote respect and protection of the rights of every individual in Bulgaria. Over the past 19 years BHC has been engaged in human rights monitoring in a number of spheres of Bulgaria's social life, where respect and protection of human rights had been problematic. These include the rights of ethnic and religious minorities, rights of the child, rights of persons with mental disabilities, conditions in places of detention, refugees' and migrants' rights, freedom of expression, assembly and association, access to justice, and protection against discrimination. In addition to monitoring, BHC is involved in litigation on behalf of victims of human rights violations, as well as in advocacy aimed at changing the laws and practices that systematically lead to the violation of human rights in Bulgaria.

In the present report BHC sums up the results of several dozens of its publications on issues relevant to the subject-matter of Bulgaria's review before the UN Human Rights Committee. It is focused around the list of issues to be taken up in connection with the consideration of the third periodic report of Bulgaria, identified by the Committee on 3 December 2010, and is not intended to duplicate information from other relevant submissions. More information on BHC's human rights monitoring, including all its publications, can be found on the organisation's website: www.bghelsinki.org.

1. Protection against discrimination

1.1. Legislative and administrative measures against discrimination

In 2003, Bulgaria adopted the *Protection against Discrimination Act*¹, which came into force in 2004 as part of the harmonisation process of national legislation with EU equality standards.² It is a single equality law that bans discrimination on various grounds (race/ethnicity, sex, religion/belief, sexual orientation, social status, disability and age among others), and provides uniform standards for protection and remedy. The act also establishes the Protection against Discrimination Commission (PADC) – an independent specialised equality body, which functions beyond the duration of one government mandate.

PADC, which started operating with a year's delay in 2006, can hear and investigate complaints by victims and communications by third parties, initiate proceedings on its own initiative, and issue binding instructions for the observance of anti-discrimination legislation. It can make recommendations for amendments, additions, abrogation of practices or acts, or appeal in court the administrative regulations infringing equality and non-discrimination principles. At the end of 2010, PADC submitted to the International Coordinating Committee of NHRIs (ICC) its application for accreditation as a national human rights institution.

Apart from PADC, the enforcement of anti-discrimination legislation can also be enforced through judicial proceedings before the general civil courts. Their jurisprudence, however, is inconsistent. In 2006, Citizens against Hatred Coalition brought a case against the far-right political figure, chairman of the nationalist Ataka party, Volen Siderov for his persistent harassment of minorities: the LGBT community, Roma, and other ethnic or religious

¹ An English version of the act is available at < <http://www.regione.taa.it/biblioteca/minoranze/bulgaria2.pdf>> (21 April 2011).

² An overview of the main anti-discrimination legislation in Bulgaria is available at < <http://www.non-discrimination.net/content/main-legislation-12>> (21 April 2011).

communities. The Sofia District Court (SDC) inadequately split the case into eight different cases – in only two of those Siderov was ruled against. By splintering the case, the court ‘buttressed the form of pseudo freedom of expression that in reality is unadulterated hate speech’.³ In 2009, the Supreme Court of Cassation (SCC) revoked a second-instance ruling against Siderov for his anti-Turkish propaganda.

In contrast, PADC has been increasingly active in protecting citizens from the persistent discrimination on a number of grounds: ethnic origin, sexual orientation, religion, disability, age, and race among others. In 2010, the commission initiated 268 cases, organised 388 public hearings, and ruled on 293 cases.⁴ In December, the commission ruled against the Ministry of Justice’s General Directorate for Execution of Penal Sanctions (GDEP) for the lack of provision of accessible architectural infrastructure in the Pazardzhik town police station. An arrestee with special needs (in a wheelchair) brought action against GDEP. Over the past year, PADC also ruled against and imposed a fine on the MP Yane Yanev, who harassed a municipal mayor on the grounds of religion, social status, and political opinion: the MP had publicly likened Mayor Ahmed Bashev to Osama bin Laden. The member of the far-right political formation Bulgarian National Union, Boyan Rasate, was also fined for his crude racist remarks on television. PADC ruled in many other cases involving ethnic and religious discrimination and discrimination on the basis of sexual orientation.

Despite the steady expansion of the commission’s anti-discrimination activity, on 28 April 2010, the Council of Ministers of Bulgaria decided to reduce PADC’s membership from nine to seven persons, allegedly due to tight budgets. The Chair of the Council of Europe’s Commission against Racism and Intolerance, Nils Muiznieks, together with the Council of Europe (CoE) Commissioner for Human Rights, Thomas Hammarberg, condemned these restrictive measures against PADC. Ignoring the ensuing public criticism, parliament passed the respective amendment of the *Protection against Discrimination Act* at the first reading, while the second reading is still to be scheduled.

Another hindrance to the proper operation of PADC is the end of the legal mandate of its current membership – a serious dent in the legitimacy of the commission, often used as a counterargument by those, prone to discriminatory practices, i.e. supporters of the political party Ataka.⁵ A more transparent PADC membership selection procedure is also vital for increasing the body’s legitimacy leverage. Moreover, PADC needs to hone its interpretation of the notion of ‘indirect discrimination’ as a separate concept from direct discrimination.

1.2. Discrimination of institutionalised persons with mental disabilities

Bulgaria is severely lagging in adopting measures to combat discrimination of persons with mental disabilities. It has not yet fulfilled any of the recommendations included in the ‘Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care’.⁶ The report was submitted by the European Commission to member states in 2009 and delineates the desirable trajectory of the common EU disability strategy. The government’s indolence regarding the provision of adequate social support for the purposes of deinstitutionalisation, together with the *de facto* isolation of institutionalised persons with

³ Interview, Margarita Ilieva, attorney representing the case, Sofia, Bulgaria, 21 April 2011.

⁴ Protection against Discrimination Commission, ‘Annual Report 2010’, PACD, Sofia, 2010, < http://kzd-nondiscrimination.com/start/images/stories/pdf/annual_report_2010.pdf> (18 April 2011).

⁵ See, for example, ‘Ataka exposes the lies of Kemal Eyup’, *Ataka*, 18 April 2011, < http://www.vestnikataka.bg/show_news.php?id=209864&cat=3> (21 April 2011).

⁶ The report was put together by the Directorate-General for Employment, Social Affairs and Equal Opportunities and is available at <<http://ec.europa.eu/social/BlobServlet?docId=3992&langId=en>> (20 April 2011).

mental disabilities from the existing network of social services, has led to a number of grave violations of their right to personal freedom and private and family life. This persistent form of marginalisation has furthermore deprived institutionalised persons from access to legal protection.

According to the most recent statistical data, in Bulgaria, the total number of people with intellectual disabilities in 2008 was 39,304, while the people with mental health problems were 75,981.⁷ These figures appear particularly striking against the backdrop of the total population of the country – 7,563,710. At the end of 2008, 1,502 children and young adults lived in 26 care institutions for children with intellectual disabilities, 767 young people lived in nine social-education professional centres (boarding schools for persons with disabilities at the age 14 to 35) and 4,401 people lived in 58 institutions for adults with intellectual disabilities, mental health problems and dementia.⁸

In May 2010, the Ministry of Labour and Social Policy (MLSP) finalised a plan, entitled ‘Strategy for Deinstitutionalisation of Elderly Persons with Mental Illnesses, Mental Disabilities and Dementia’ in an attempt to provide better chances for the abovementioned population for accommodation in the community.⁹ Yet, at the present writing, the strategy was still to be adopted. The strategy itself acknowledges that the existing system of social care in Bulgaria cannot respond amply to the needs of persons with mental and other disabilities. What is more, the strategy features no reliable data on the number of institutionalised persons, as well as their needs.

The existing centralised administrative procedure for institutionalisation of persons with mental disabilities facilitates their arbitrary placement, which in itself constitutes a form of deprivation of liberty. In most cases, the Social Assistance Agency (SAA) places persons with mental disabilities away from their places of birth or usual residence, in municipalities that are often either hostile or too small to provide necessary services.

Moreover, there is an obvious lack of respective facilities within the community. At the beginning of 2011, for example, in Bulgaria there were only 20 ‘protected homes’ for adults with mental health problems with a total capacity of 205 and 64 such homes for adults with intellectual disabilities with a total capacity of 525.¹⁰ In 2010, only three new ‘protected homes’ for adults with intellectual disabilities (total capacity of 30), four centres for family-type accommodation of adults with intellectual abilities (total capacity of 28), and one such centre for adults with mental health problems were opened.¹¹ Thus, only 760 adults can benefit from residential care in the community. The proportion of those that have been deinstitutionalised to those coming to alternative care from the community remains unclear, and so does the question of whether the new, expanded capacity is fully utilised.

In terms of capacity, as of 30 April 2011, the institutions for people with mental disabilities in Bulgaria can accommodate up to 4,178 people: 2,243 with intellectual disabilities, 1,169

⁷ National Centre for Health Information, ‘Statistics: Patients in Psychiatric Institutions, Offices, and Outpatient Clinics’, 31 December 2008, <http://www.nchi.government.bg/statistika/B_5.pdf> (1 June 2011).

⁸ National Statistics Institute, ‘Data on Social Services, Provided in Specialised’, 2008, <<http://www.nsi.bg/otrasal.php?otr=22&a1=537&a2=542#cont>> (1 June 2011).

⁹ The plan is available in Bulgarian only at

< http://www.mlsp.government.bg%2Fbg%2Fdocs%2FVISIA_ZA_DEINSTITUCIALIZACIA_POSLEDE_N_2222_11.doc&rct=j&q= > (20 April 2011).

¹⁰ Social Assistance Agency, ‘Protected Homes’, 28 February 2011,

< http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1§id=24&s1=23&selid=23 > (1 June 2011).

¹¹ Social Assistance Agency, ‘Annual Report 2010’,

< http://www.asp.government.bg/ASP_Files/APP/Otchet-ASP-obobshten-2010.htm > (1 June 2011).

with mental health problems, and 766 with dementia.¹² Even if some deinstitutionalisation has been going on, an estimated 4,000 people altogether remain in the abovementioned facilities.

Thus, the possibilities for arranging residence in the community are eclipsed by the omnipresent institutionalisation practice. For the most part, institutionalisation in Bulgaria signifies discrimination and inadequate treatment of persons with mental disabilities in closed facilities. In 2009, during a fieldwork trip, BHC ascertained that forced immobilisation and isolation of institutionalised persons is still practiced. In the care home for elderly persons with mental illnesses in Rovino, near the town of Smolyan, 12 of the patients were regularly “tamed” – their crisis conditions were managed through confinement in dark basements, abandoned rooms, and fenced yards. Despite the pronounced unlawfulness of such praxis, the archives of the Rovino establishment for 2008 justify it as necessary due to the aggressive behaviour of the patients.¹³ The medical treatment of institutionalised persons is often similarly inhumane. During a visit to the Radovets home in the Topolovgrad municipality, BHC confirmed that all the institutionalised persons apart from one were being administered excessive doses of haloperidol – an antipsychotic substance, which, when administered in excessive doses, leads to substantial difficulties in the performance of basic daily activities.¹⁴

Such inhumane treatment precludes any meaningful effort towards reintegration or capacity building for institutionalised persons. In Bulgaria, psycho-social rehabilitation programmes simply do not exist. As a result of this separation from the outside world, coupled with a complete lack of access to information, a lot of the institutionalised persons develop the so-called ‘institutional syndrome’, which strips them of independence and responsibility to the point of depersonalisation.

In the Pastra care home for elderly persons with mental illnesses, there is currently no free access to contemporary means of communication. The institutionalised persons can only conduct monitored conversations over the phone and make use of the single TV set in the whole facility. Their personal savings are pooled together in a communal bank account under the name of the Rila municipality.¹⁵ Although in 2010 it was planned for the Pastra home to be relocated to the town of Rila, it was only renovated. Since 2003, the European Committee for the Prevention of Torture has been recommending the *closure* of the Pastra home due to poor living conditions and ‘inhuman and degrading treatment’ of the institutionalised persons.¹⁶

2010 witnessed the amendment of the *Medical Institutions Act*. The amended art. 82 now provides for the establishment of boards of trustees within institutions for treatment of persons with mental illnesses. This attempt at empowering institutionalised persons, their relatives and certain NGOs, however, remains highly contingent upon the operation of the state administration. Thus, direct communication between those receiving social care and the respective providers (at the institution) remains difficult to instigate.

Similarly problematic is the improvement of accessibility to domestic legal remedy for institutionalised persons. In February 2010, a case was brought against the Prosecutor’s Office, in accordance with the *Protection against Discrimination Act*, for the Office’s reluctance to investigate the death of 75 children and a large number of physical injuries among institutionalised children with mental and other disabilities. Without having had

¹² Social Assistance Agency, ‘Specialised Services’, < http://www.asp.government.bg/ASP_Client/ClientServlet?cmd= add_content&lng= 1§id= 24&s1= 22&selid= 22> (1 June 2011).

¹³ Bulgarian Helsinki Committee, ‘Annual Report 2009’, BHC, Sofia, 2009, p. 29.

¹⁴ *Ibid.*, p. 30.

¹⁵ Inspection report, based on executive order ПД01-588/14.05.2010, issued by the executive director of SSA.

¹⁶ Amnesty International, ‘Bulgaria - Amnesty International Report 2010’, Amnesty International, 2010 < <http://www.amnesty.org/en/region/bulgaria/report-2010> > (20 April 2011).

established whether the children's deaths and injuries are due to neglect on the part of the care workers, the Office refused to initiate pre-trial proceedings.

Legal protection of adults with mental disabilities is also a serious problem. In 2006, BHC and the Budapest-based Mental Disability Advocacy Centre (MDAC) helped two applicants bring their cases to the European Court of Human Rights (ECtHR): *Stanev v. Bulgaria* and *Mitev v. Bulgaria*. Both cases involve applicants' arbitrary deprivation of legal capacity and placement under guardianship. They also concern their placement in an institution against their will and without judicial review.¹⁷ Mr Mitev died in the Pravda institution in 2009, while Mr Stanev became the first person from a social care institution to be present at the Court hearings in Strasbourg both before the Chamber and the Grand Chamber.¹⁸

1.3. Measures to eliminate discrimination and the social exclusion of persons belonging to ethnic minorities

The approach of the Bulgarian government towards the elimination of discrimination against persons belonging to ethnic and national minorities, and in particular – the Roma community, is marked by a rather prolific adoption and publication of documents.¹⁹ A wide array of plans, programmes, and strategies seek to integrate the Roma in the political, social, economic, and cultural fabric of Bulgarian society, and thus – to minimise exclusion. This relentless strategic planning is complemented by the *Protection against Discrimination Act*, the Centre for Educational Integration of Children and Students from Ethnic Minorities, operational since January 2005, and the 15-year-long existence of a governmental body for coordination of integration efforts.²⁰

Despite the abundance of strategies, plans and programmes, government policy on integration and elimination of discrimination against Roma, however, remains very poorly funded by the state budget and haphazardly implemented. The National Council for Cooperation on Ethnic and Integration Issues (NCCEII) has no authority to impose sanctions. Neither can it demand from the public authorities the implementation of targeted policies for protection against discrimination and for integration of the Roma minority.²¹ Effectively, nothing has been done to ameliorate discriminatory practices towards the Roma community in

¹⁷ e-Include, 'European Court of Human Rights Hears First Social Care Institution Case', November 2010 < <http://www.e-include.eu/en/news/374-european-court-of-human-rights-hears-first-social-care-institution-case>> (20 April 2011).

¹⁸ For more information on discrimination of persons with mental disabilities, see the joint MDAC-BHC submission to the present review.

¹⁹ The most momentous such documents over the past 12 years have been the Council of Ministers' 'Framework Programme for Equal Integration of the Roma in Bulgarian Society', April 1999, amended and supplemented in May 2010; the National Action Plan 'A Decade of Roma Inclusion 2005 – 2015'; the 'National Programme for Improving Roma Housing in Bulgaria for 2005 – 2015', the 'Healthcare Strategy for Disadvantaged Ethnic Minorities', and the 2004 'Strategy for Educational Integration of Children and Students from Ethnic Minorities'.

²⁰ The body has undergone a number of name changes and internal reorganisations, but has always been an advisory structure that brings together representatives of ministries and ethnic minority NGOs. As of 2005 its chairman is one of the deputy prime ministers. Currently, the body is called the National Council for Cooperation on Ethnic and Integration Issues (NCCEII).

²¹ A detailed analysis of the discriminatory practices of the state against Roma minorities can be found in 'Written Comments of the Bulgarian Helsinki Committee and the European Roma Rights Centre Concerning Bulgaria for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 74th session', BHC and ERRC, Sofia and Budapest, December 2008, < http://www.bghelsinki.org/upload/resources/BHC_ERRC_Bulgaria_CERD74_bg.pdf> (30 May 2011).

the spheres of political participation, education, employment, healthcare, social welfare, and housing.²²

Roma representation in Bulgarian political life is utterly disproportionate to the size of the community. Currently, there is only one MP of Roma origin in parliament – Ms Mariana Hristova from the opposition party Coalition for Bulgaria. The previous National Assembly also had only one Roma MP among its membership, but there were two Roma deputy ministers. There are no representatives of the Roma community in the government anymore. The Roma official at the most senior position in the state administration – Milen Milanov, national coordinator of the Decade of Roma Inclusion Programme and advisor to the Minister of Labour and Social Policy – was dismissed at the end of 2010. Although there are a few Roma municipal councillors and several Roma mayors in villages with a compact Roma population, no further governmental incentives for the expansion of political representation and participation of the Roma community exist.

Despite governmental plans in the sphere of education, deeply-institutionalised segregation persists as a fundamental challenge.²³ The main desegregation achievement so far is the creation of the Centre for Educational Integration of Children and Students from Ethnic Minorities. In 2010, it funded a total of 79 projects for school integration and desegregation of Roma children with a budget of 960,248 BGN.²⁴ This budget, however, is highly insufficient in face of the daunting task to ensure full equality of Roma children in education and the elimination of segregation of Roma students. Commendable, but similarly limited, are also the government's endeavours to lower unemployment rates among the Roma community. MLSP has been running a number of initiatives – skills training, seminars, vocational courses – whose effectiveness, though, is suboptimal. In 2010, according to MLSP statistics, the abovementioned capacity-building programmes provided employment to only about 2,000 Roma community members.²⁵ Still, about 50 per cent of the working-age Roma (18 - 65 years) are unemployed, while 8.6 per cent have only temporary, non-contractual jobs in the grey economy.²⁶

The high unemployment and poverty rates among the Roma also have very negative implications for their access to adequate healthcare. Despite efforts to improve access to healthcare for the residents of Roma ghettos – through mobile physicians' offices and mass screenings for diseases²⁷ – unemployed Roma without any source of income cannot afford to contribute towards their health insurance and thus are deprived of their right to healthcare. The state budget that covers treatment of emergency cases for non-insured citizens is only five million BGN. A convincing illustration of the discriminatory practices of the Bulgarian government towards the Roma community in respect of healthcare provision is the 2010

²² Deyan Kolev, et al., *Roma Integration in Bulgaria*, Astarta, Plvodiv, 2010, p. 8.

²³ A more comprehensive overview of the segregation problematic and NGO efforts at addressing it can be read in Krassimir Kanev et al., *On the Way to Maturity: Assessment of the Desegregation Process, Carried out by Non-governmental Organisations in Bulgaria*, BHC, Sofia, 2008, < <http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=647>> (31 May 2011).

²⁴ NCCEII, 'Monitoring Report for 2010 Regarding the Implementation of the National Action Plan for the Decade of Roma Inclusion Initiative 2005 – 2015', Sofia, 2011, p. 22-23. < http://www.nccedi.government.bg/upload/docs/Monitoring_report_2010_Roma_Decada.doc> (31 May 2011).

²⁵ The Roma population in Bulgaria was estimated at 370,908 in the 2001 National Census. The census registered self-identification of ethnic belonging. The number of Roma who are identified as such by the surrounding population according to expert opinions is between 700,000 and 800,000 persons. Many of them self-identify as Bulgarians or ethnic Turks.

²⁶ Open Society Institute, 'The Roma in Bulgaria: An Informational Handbook', OSI, Sofia, 2008, p. 24, < <http://ethnos.bg/data/file/Documents/Researches/RomaGuideFinal.pdf>> (31 May 2011).

²⁷ NCCEII, 'Monitoring Report for 2010', Healthcare section, p. 36-57.

outbreak of measles.²⁸ Vaccination against measles in Bulgaria is free, but was clearly not provided to all communities.

Between 2007 and 2011, the provision of social assistance to poor citizens was also curtailed. According to the amendments of the *Social Assistance Act*, the granting of social assistance benefits was made temporary and not according to the needs of the beneficiaries. Roma citizens were the most affected by these restrictive provisions. Many families lost their right to social assistance and were left practically on the street. The amendment was subject to a ruling against Bulgaria by the European Committee of Social Rights, which found that the new law was ‘likely to have a considerable impact upon some of the most disadvantaged groups in Bulgaria and, in particular, upon the Roma – in light of the special difficulties that Roma face in gaining access to the labour market and the statistical evidence that exists of the extent to which Roma families are dependent upon social assistance’.²⁹

Regarding the equally thorny issue of housing provision for Roma families, the National Programme for Improving Housing Conditions of Roma in Bulgaria was updated in 2010. For 2009, 12 million BGN were allocated to the implementation of the programme: mostly for water, sanitation and hygiene projects in a number of Roma neighbourhoods. The lack of cadastral surveys and records of property rights for these Roma neighbourhoods, however, makes it impossible for Roma families to obtain title deeds and thus, exercise their ownership rights. Furthermore, the *Territorial Organisation Act* prevents municipalities from carrying out large-scale public works in Roma neighbourhoods, for it categorises the latter as ‘illegal’ and encourages the persistent practice of forced evictions and demolitions. On several occasions the government imposed moratoriums on legal provisions allowing legalisation of real property on municipal lands through adverse possession.³⁰

The Roma community is also subject to the discriminatory practice of racial profiling. Racial profiling is prevalent in Bulgaria and even the Ministry of Interior recognises it as a problem.³¹ Still, the ministry has failed to adopt relevant secondary legislation explicitly prohibiting the practice of racial profiling. The number of Roma police officers working in Roma neighbourhoods is negligible – a few dozen people – provided that the personnel of the police force exceeds 60,000 employees. The Ministry of Interior has planned the execution of employee training sessions for work with ethnic minorities, but ‘due to lack of funds, in 2008, 2009, and 2010 such training was not conducted’.³²

It is thus difficult to discern any systematic measures on the part of the Bulgarian government to combat the tenacity of negative stereotyping towards the Roma and other minority groups. Despite the adoption in 2007 of the National Plan against Discrimination, the actual work towards the elimination of discriminatory practices has become the prerogative of the civil society and NGO networks. The National Plan has never been revised or updated and the deadline for its implementation has long expired. The only state organ that truly manages to tackle discrimination is PADC, which between 2007 and 2009 initiated 37 proceedings in cases of discriminatory hate speech in the media, but whose mandate and work at present is subject to substantial external pressures.³³

²⁸ According to NCCEII’s report for 2010, 89 per cent of the infected with measles were Roma.

²⁹ European Committee of Social Rights, *European Roma Rights Centre (ERRC) v. Bulgaria*, 48/2008, 18 February 2008.

³⁰ More on the forced evictions and demolitions in Roma neighbourhoods can be found in section 4.2.

³¹ Centre for the Study of Democracy, ‘Police Checks and the Use of Ethnic Profiling in Bulgaria’, CSD, Sofia, 2006, < <http://www.csd.bg/artShowbg.php?id=7939> > (31 May 2011).

³² NCCEII, ‘Monitoring Report for 2010’, Healthcare section, p. 70.

³³ See section 1.1.

2. Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment

2.1. Elimination of corporal punishment

Although corporal punishment is prohibited under the general statutes prohibiting infliction of bodily harm, coercion, abuse of authority, etc., the *de facto* elimination of the flawed practice in Bulgaria is still not accomplished. Moreover, there is no specific provision in the *Criminal Code* criminalising the corporal punishment of children. To an extent, this is due to the fact that in Bulgaria corporal punishment of children is still considered admissible in practice under certain circumstances.

According to a 2009 study, 34.8 per cent of the Bulgarian respondents claimed that corporal punishment ‘should not be used in general but in certain situations it is justifiable’, while an alarming 10.9 per cent felt that corporal punishment was acceptable ‘if the parent believes that it will be effective’.³⁴

The incidence of use of corporal punishment in institutions for children with disabilities is most certainly substantially higher than in the families, as established by the monitoring work in these institutions by the BHC. In 2010, BHC carried out an investigation into the treatment of children with mental disabilities in social care homes.³⁵ A number of cases of physical abuse, perpetrated by the employees of each institution, were documented in the children’s personal files.³⁶ Some of the injuries were quite serious, including infliction of lasting bodily harms.

Although not as appalling, the corporal punishment situation in schools also deserves mentioning. An initiative to abolish all forms of violence in Bulgarian schools was recently launched by the State Agency for Protection of Children (SAPC), in conjunction with UNICEF and the Ministry of Education, Youth and Science. Yet, campaign-related activities are taking place only in eight of the 2,500 schools in Bulgaria.³⁷ In its strategic plan for 2012-2013, SAPC envisages fresh attempts at tackling the corporal punishment problematic such as ‘analysis of common practices and international standards regarding issues of violence against children’.³⁸ Despite the projected expansion of efforts to combat corporal punishment in various settings, media reports of such incidents abound.³⁹

2.2. Sexual coercion of female minors from ethnic minorities

The purportedly cultural practice of forced marriage of female minors from the Roma community in Bulgaria has been a theme of numerous public debates, but little preventive

³⁴ Global Initiative to End All Corporal Punishment of Children, ‘Bulgaria – Country Report’ (January 2011) < <http://www.endcorporalpunishment.org/pages/pdfs/states-reports/Bulgaria.pdf>> (30 May 2011), p. 2-3.

³⁵ A more detailed exposé of the findings of the study can be found in section 3.5.

³⁶ All relevant statistics and reports are available (in English) at < <http://forsakenchildren.bghelsinki.org/en/>> (16 May 2011).

³⁷ Ministry of Education, Youth and Science, ‘Registry of All schools and Kindergartens’, MEYS, February 2011, < <http://www2.minedu.government.bg/adminmon/schools/>> (30 May 2011).

³⁸ State Agency for the Protection of Children, ‘Strategic Plan 2011 – 2013’, SAPC, Sofia, 2011, < http://sacp.government.bg/media/cms_page_media/21/STRATEG_%20plan%20DAZD-2011-2013_1.doc> (30 May 2011).

³⁹ See, for example, ‘Mother Beat Her Child to Death’, *Darik News*, 18 July 2008 < http://dariknews.bg/view_article.php?article_id=273432> or ‘Father Beats up His Child, the Mother Hides It’, *Dnes Dir bg*, 7 February 2011, < <http://dnes.dir.bg/news/poboy-dete-botevgrad-7945276>> (30 May 2011).

action. Informal marriage arrangements among Roma teenagers are widely made and regarded as ‘family-organised partnerships’ along the lines of consensual marriage. The girls who join such partnerships, and thus fulfil all the duties traditionally viewed as the wife’s, are often under the age of 14. In the conditions of extreme poverty, which characterise the socio-economic setting of some of the members of the Roma community, such early marriages are also seen as a coping strategy, and not only a tradition.⁴⁰ At the same time, the resultant coercion into sexual activity, which is often accompanied by unwanted and hazardous pregnancies at an early age, presents a serious obstacle to many Roma girls’ access to education and hence – any form of professional realisation. What is more, by virtue of its informal character, it provides Roma girls with virtually no legal instruments for defence in case of mistreatment.

According to a 2010 survey, 13 per cent of the Roma community allow for such early cohabitation (consensual marriage), but even they do not consider it appropriate.⁴¹ The prevalent critical view of the practice, alongside with pertinent legislation, however, provides little deterrence. In Bulgaria, sexual activities with persons who are under the age of 14, are punishable by law (imprisonment between two and six years) irrespective of whether the act was consensual.⁴² While stories of forced marriages, ensuing sexual coercion, and early-teenage pregnancies are ubiquitous in the media, none of the young girls’ partners are ever investigated or brought to court.⁴³ The police, together with the social services, tend to turn a blind eye to the problem, while no government action has been taken or envisaged for the establishment of a countrywide preventive mechanism.

2.3. Use of force and firearms by security services

Excessive use of force and firearms by law enforcement officers is one of the biggest stains on Bulgaria’s human rights record. In 2010 alone, ECtHR ruled against Bulgaria on eight cases of excessive use of force and firearms by law enforcement officers.⁴⁴ In half of the cases, the actions of the security forces led to the death of the victims. Killings, torture and other inhuman and/or degrading treatment, reluctance to provide lifesaving medical assistance, and racially-motivated discrimination against persons of Roma origin in the hands of law enforcement officers are among the most persistent violations with no positive developments over the past six years.

Between 1998 and 2010, ECtHR delivered 27 judgments in favour of the applicants (including one by the Grand Chamber) in 26 police brutality cases in respect of Bulgaria.⁴⁵ In two cases, the court could not ascertain from the available evidence that the perpetrators of the violence were definitely police officers. Yet, it delivered judgements against Bulgaria for

⁴⁰ More on the hazards of early (forced) marriage can be read in section 4.1. ‘Women and Motherhood’ of UNICEF’s 2007 report, entitled ‘Breaking the Cycle of Exclusion: Roma Children in South East Europe’, UNICEF, Belgrade, 2007, p. 26 < http://www.unicef.org/ceecis/070305-Subregional_Study_Roma_Children.pdf> (30 May 2011).

⁴¹ Aleksey Pamporov, ‘Marriage Tendencies among Roma Communities in Bulgaria’, Open Society Institute, Amalipe, Sofia, 2010, < http://amalipe.com/files/publications/280610_Pamporov.pdf> (30 May 2011).

⁴² *Criminal Code*, art. 151, para 1.

⁴³ See, for example, ‘13-year-old Gives Birth in Gabrovo’, *Vseki Den*, 14 March 2009 < <http://www.vsekiden.com/47145>> , or ‘Children Give Birth to Children’, *Tema*, 2007 archive (30 May 2011).

⁴⁴ ECtHR, ‘Annual Report 2010 (provisional version)’, Council of Europe, 2011, p. 130.

⁴⁵ For a comprehensive list of the cases, please see Margarita Ilieva, ‘Police Brutality in Bulgaria as Seen by the European Court of Human Rights – Unlawfulness and Impunity’, Bulgarian Helsinki Committee, 2010, Sofia, p. 1 (footnotes).

its inadequate investigation.⁴⁶ In only one case the court did not find the perpetrated violence to be grave enough, but still ruled against the state because of the flaws of the investigation.⁴⁷

Death was caused in nine of the cases – 10 people were killed altogether.⁴⁸ Sixteen of the cases considered by the court included inhuman or degrading treatment, while in three of them the police refused to provide victims with lifesaving medical assistance.⁴⁹ Most of the victims are very young: three minors, 16 people between 19 and 29 years, four people between 30 and 36 years of age. A disturbingly disproportionate number of police brutality victims – more than a third of the applicants – are of Roma ethnic origin.⁵⁰ In the case of *Nachova and Others v. Bulgaria*, the court found that the murder of two young men and the ensuing flaws of the investigation were discriminatory on the ground of race.⁵¹ In two other judgements on cases of excessive use of police force, the court put emphasis on the precarious position of the Roma community with respect to the potential of excessive use of force by the police.⁵²

ECtHR described the investigation of all abovementioned cases as deficient. Moreover, none of the police officers involved was ever effectively punished or sanctioned in any way by a domestic court: instead of being dismissed, some of the officers were promoted.⁵³ Not a single police officer had been effectively found against before the cases were brought to the court. This translates as 100 per cent impunity for the violent law enforcement officers and respectively – guaranteed re-victimisation of those who have suffered from excessive use of force. Two overly violent police officers were found guilty after the case was brought to Strasbourg in one case, but received only conditional sentences.⁵⁴

The implementation of ECtHR judgments is following a similar flawed pattern as the investigations at the time of the events. Seventeen judgments involving excessive use of force or firearms are still pending for execution of individual and general measures before the CoE Committee of Ministers, including, where necessary – reopening of investigations. Some of the judgments remained in the docket of the Committee of Ministers for execution since 2000,⁵⁵ because the Bulgarian authorities refuse to reopen the investigations and to adopt the

⁴⁶ ECtHR, *Assenov and Others v. Bulgaria*, 24760/94, 28 October 1998.

⁴⁷ ECtHR, *Stefan Iliev v. Bulgaria*, 53121/99, 10 May 2007. The perpetrators in this case were indubitably police officers.

⁴⁸ ECtHR, *Karandja v. Bulgaria*, 69180/01, 7 October 2010; *Vlaevi v. Bulgaria*, 272/02 and 890/05, 2 September 2010; *Bekirski v. Bulgaria*, 71420/01, 2 September 2010; *Vachkovi v. Bulgaria*, 2747/02, 8 July 2010; *Nikolova and Velichkova v. Bulgaria*, 7888/03, 20 December 2007; *Ognyanova and Choban v. Bulgaria*, 46317/99, 23 February 2006; *Nachova and Others v. Bulgaria*, 43577/98 and 43579/98, 6 July 2005; *Angelova and Iliev v. Bulgaria*, 55523/00, 26 July 2007; *Velikova v. Bulgaria*, 41488/98, 18 May 2000.

⁴⁹ ECtHR, *Bekirski v. Bulgaria*; *Shishkovi v. Bulgaria*, 17322/04, 25 March 2010; *Angelov v. Bulgaria*, 44076/98, 22 April 2004; *Sashov and Others v. Bulgaria*, 14383/03, 7 January 2010; *Georgi Dimitrov v. Bulgaria*, 31365/02, 15 January 2009; *Vladimir Georgiev v. Bulgaria*, 61275/00, 16 October 2008; *Vasil Petrov v. Bulgaria*, 57883/00, 31 July 2008; *Boyko Ivanov v. Bulgaria*, 69138/01, 22 July 2008; *Ivan Vasilev v. Bulgaria*, 48130/99, 12 April 2007; *Rashid v. Bulgaria*, 47905/99, 18 January 2007; *Ognyanova and Choban v. Bulgaria*; *Tsekov v. Bulgaria*, 45500/99, 23 February 2006; *Osman v. Bulgaria*, 41488/98, 18 May 2000; *Krastanov v. Bulgaria*, 50222/99, 30 September 2004; *Toteva v. Bulgaria*, 42027/98, 19 May 2004; *Angelova and Iliev v. Bulgaria*.

⁵⁰ ECtHR, *Vasil Sashov Petrov v. Bulgaria*, 63106/00, 10 July 2010; *Sashov and Others v. Bulgaria*; *Ognyanova and Choban v. Bulgaria*; *Tsekov v. Bulgaria*; *Nachova and Others v. Bulgaria*; *Angelova and Iliev v. Bulgaria*; *Velikova v. Bulgaria*, 41488/98, 18 May 2000; *Assenov and Others v. Bulgaria*; *Angelova v. Bulgaria*, 38361/97, 13 June 2002.

⁵¹ ECtHR, *Nachova and Others v. Bulgaria* in the judgment of the Section. The Grand Chamber assumes that there was discrimination only in the inadequate investigation.

⁵² ECtHR, *Sashov and Others v. Bulgaria* and *Ognyanova and Choban v. Bulgaria*.

⁵³ See para. 63 of the ECtHR judgement in *Nikolova and Velichkova v. Bulgaria*.

⁵⁴ ECtHR *Nikolova and Velichkova v. Bulgaria*.

⁵⁵ For example, the ECtHR judgement in the case of *Velikova v. Bulgaria*.

necessary legislative measures to ensure the requisite level of protection and independence of the investigations involving law enforcement officials.⁵⁶ In general, the Prosecutor’s Office is reluctant to indict police officers – prosecutors and investigators alike remain committed to shielding aberrant law enforcement officials. The very few cases that do make it to court are adjudicated by magistrates lenient on police brutality.

Police brutality has almost been normalised during pre-trial proceedings. A series of surveys, conducted by BHC in four Bulgarian prisons since 2005, examine the conditions of preliminary detention among newly-arrived prisoners. The data reveal an enduring trend of high levels of reported use of force against them during pre-trial proceedings (see *Fig. 1* below). The share of respondents who reported an unnecessary use of force at the time of the arrest, which can be legal under certain circumstances, approximates that of the respondents indicating use of force inside the police station, which is illegal.

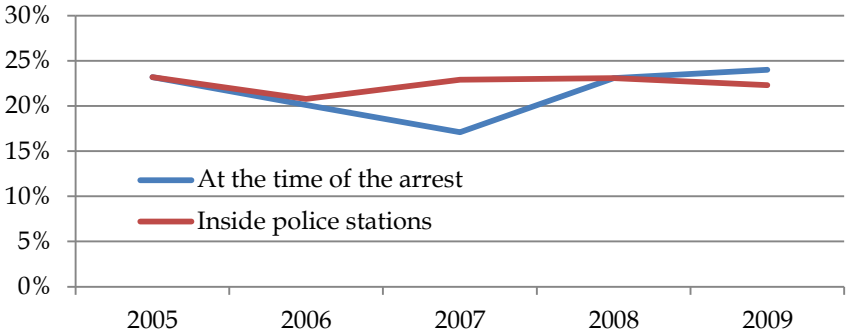


Fig. 1. Use of force by police by year: per cent of interviewees responding that force was used against them.

The pertinent national legislation gives *carte blanche* to excessive use of firearms. According to art. 74 of the *Ministry of Interior Act*, law enforcement officers are allowed to use firearms to detain a person who is committing or has committed ‘a crime of a general nature’, as well as to prevent the escape of a person, who might not present any threat.⁵⁷ Technically speaking, national legislation allows police officers to use firearms in arresting persons regardless of the gravity of the crime they have been suspected of committing, and notwithstanding the magnitude of the potential threat that person is posing. The flawed article also legitimises any shot, produced by police officers, at virtually anyone who does not stop upon their warning. The enactment of this provision constitutes an obvious breach of art. 6, para. 1 of the ICCPR that ‘no one shall be arbitrarily deprived of his life’. In many of its judgments in respect of Bulgaria, ECtHR has cited the act as conflicting with other international law norms that protect the right to life and guarantee protection from inhuman or degrading treatment. Art. 74 of the *Ministry of Interior Act* also does not comply with Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The case of the 28-year old Marian Ivanov (also referred to as Marian Dimitrov), who was shot by a police officer on 23 July 2010, provides a vivid illustration of both the extent to which law enforcement officials feel “empowered” by the law to overuse force and firearms, and the disinclination of the prosecutors to efficiently, if at all, investigate such cases. The investigation of the case cited the flawed *Ministry of Interior Act* and concluded that ‘the act

⁵⁶ See, for instance, the most recent list of cases pending for execution by the CoM, available at < http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Bulgaria_en.pdf> (29 April 2011). On per capita basis Bulgaria has one of the highest shares of cases that are not executed among the CoE member states.

⁵⁷ *Ministry of Interior Act*, 2006, < http://www.mvr.bg/NR/rdonlyres/5F939B72-40AD-45AB-A78A-D09207DB695C/0/ZMVR_EN.pdf> (29 April 2011).

performed by the police officer did not constitute a criminal offence'.⁵⁸ With this conclusion the pre-trial proceedings were terminated. Mr Ivanov's parents' lawyer has appealed the decision of the Pleven Regional Court, which has not ruled on the case at the present writing.

2.4. Ill-treatment and torture of persons in police custody

With its recommendations from June 2004, the UN Committee against Torture recommended that Bulgaria makes amendments to its *Criminal Code* in order to effectively criminalise torture.⁵⁹ To this date, the UN CAT recommendation has not been implemented. Despite the fact that a number of amendments to the *Criminal Code* were made since 2004 and that the Ministry of Justice began drafting a new code, in the current code, torture is still not criminalised in accordance with art. 1 of the CAT. Instead, Bulgarian authorities claim that art. 287 and art. 143 of the *Criminal Code*, which refer to coercion in general and coercive extraction of information or confession from criminal defendants or witnesses, furnish sufficient legal provisions in compliance with the UN *Convention against Torture*.⁶⁰ Neither article alone or in combination, however, comprehensively addresses the crime of torture in accordance with the elements defined in art. 1 of the CAT.⁶¹ They do not feature or describe any of the basic defining aspects of torture: intense physical or mental pain or suffering; purposes such as punishment, discrimination and intimidation and all the requisite forms of involvement of a public official, including acquiescence. Art. 287 applies only to situations in the context of criminal proceedings and does not apply to the conduct of public officials in other situations. Curiously enough, both art. 143 and art. 287 existed in almost the same forms in 2004 during the review before the UN CAT, but the government at that time did not try to argue that Bulgarian legislation is in compliance with the requirements of the absolute prohibition of torture.

The proper implementation of pertinent legal provisions is also problematic. According to a recent report on police abuse by the Open Society Institute, the Ministry of Interior had made provisions for all police departments, in which interviews and interrogations are held - 180 altogether – to be equipped with cameras in the interrogation rooms.⁶² Such measures would significantly reduce the risk of abuse of detainees during interrogation in order to obtain confessions. According to Commissioner Milcho Enev, chief of the security police in Bulgaria, the installation of the cameras is now complete: 'we have placed cameras in all the spaces for detainees, including interrogation rooms, corridors, and the rooms where meetings with attorneys are held. Surveillance cameras were installed even in the receptions of the police departments'.⁶³ It has to be mentioned, however, that most incidents of abuse and torture happen outside police custody – only every fifth such incident happens inside.⁶⁴ BHC

⁵⁸ Republic of Bulgaria, 'Replies from the Government of Bulgaria to the List of Issues to be Taken up in Connection with the Consideration of the Second Periodic Report of Bulgaria' (31 March 2011), p. 13.

⁵⁹ UN Committee against Torture, 'Bulgaria: Conclusions and Recommendations', CAT, 2004, < <http://www.unhcr.org/refworld/country,,CONCOBSERVATIONS,BGR,,41173f244,0.html>> (11 June 2011).

⁶⁰ Cf. the response of the government to the list of issues, § 63.

⁶¹ *Criminal Code*, art. 287 and art. 143, respectively.

⁶² Open Society Institute, 'Interim National Report on the Civil Monitoring of Police Project August – December 2010', OSI, Sofia, 2011,

< http://www.osf.bg/downloads/File/midterm_national_report_NEW.pdf> (26 May 2011).

⁶³ 'Hiding Police Officers to Be Punished', *Zapernik*, 18 November 2010

< <http://news.zapernik.com/204915.html>> (26 May 2011).

⁶⁴ Open Society Institute, 'Interim National Report'.

annual surveys among newly-arrived prisoners in several Bulgarian prisons do not indicate any amelioration in use of force in police stations over the past years.⁶⁵

Hence the abundance of illustrative cases decided by the European Court of Human Rights. One such case is that of *Angel Vaskov Angelov v. Bulgaria* concerning the abuse of the applicant during his detention in 1998.⁶⁶ He claimed that he confessed to the theft of which he was suspected only after being beaten by police officers. The medical examination made on the day of his release revealed injuries caused by a hard object, possibly within the preceding 48 hours. Mr Angelov filed several complaints regarding the inaction of the Varna Military Prosecutor's Office. In 2003, the prosecution refused to initiate criminal proceedings against the police officers involved, on the grounds of a police report stating that no physical force was used against the applicant. Mr Angelov appealed the prosecution's order and an additional investigation was ordered in May of 2003. The police officers claimed that they were unaware of the fact that Mr Angelov had been beaten and that they did not notice any evidence of physical violence on his body during his stay at the precinct. Based on these testimonies, the military prosecutor decided that there were no grounds for initiating criminal proceedings against the two police officers due to lack of evidence that a crime had been committed.

On September 2, in the case *Bekirski v. Bulgaria*, ECtHR found Bulgaria guilty of torturing a detainee. The case concerns the continuous beatings of a person accused of murder and robberies, following his attempt to escape from the Pleven detention facility. As a result of the beatings, the detainee died. The investigation into his death as a result of torture had not been adequate and the court found both material and procedural violations of art. 2 and art. 3 of the ECHR.⁶⁷

3. Right to liberty and security of person, treatment of persons deprived of their liberty

3.1. Permissible grounds for deprivation of liberty

In its reply to the list of issues (§§75-81) the government takes a narrow approach to the problem of the permissible grounds for deprivation of liberty. It focuses only on the grounds in the framework of the criminal justice system and the system of the so-called 'administrative punishments'. In fact, the Bulgarian system uses several other grounds for deprivation of liberty in state institutions. These include:

- Civil and criminal commitment of mentally ill in hospitals for active treatment of the acute phases of their illness;
- Detention of aliens for the purposes of expulsion or to prevent their entry in Bulgaria;
- Short-term detention of alcoholics found helpless in sobering-up centres;
- Deprivation of liberty of chronically mentally disabled in social care institutions;
- Deprivation of liberty of children for punishment and for educational supervision.

The latter two categories of detention are of particular concern as the procedure as established by law, allows for arbitrariness. Mentally disabled persons who are deprived of their legal capacity can be placed in social care institutions on the basis of contracts with their guardians. The latter are often government officials – staff of social care institutions, funded by the government on the basis of the number of clients they have. There is no judicial review

⁶⁵ Cf. the graph at 2.3 supra.

⁶⁶ ECtHR, *Angel Vaskov Angelov v. Bulgaria*, 34805/02, 25 March 2010.

⁶⁷ ECtHR, *Bekirski v. Bulgaria*, 71420/01, 2 September 2010.

of the initial placement as well as subsequently – to assess the need for their continuous detention in the social care home. This arbitrary deprivation of liberty is at present under review by the European Court of Human Rights in the case of *Stanev v. Bulgaria*.⁶⁸

Deprivation of liberty of children takes place under the Bulgarian system in a variety of contexts. Delinquent children can be placed in correctional schools (social-educational boarding schools and correctional boarding schools) for up to three years by a court decision under the *Juvenile Delinquency Act* (JDA). Children are placed in such institutions or are indicated other non-custodial “correctional measures” for crimes or anti-social behaviour. The latter concept is vaguely defined in JDA and may include acts that are not illegal, such as escape from home, escape from school or homosexual acts.⁶⁹ JDA regulation of the court procedure for placement in correctional schools is incomplete and vague. It does not provide for obligatory participation of a lawyer, does not guarantee the right to cross examine witnesses and allows for admission of hearsay. In practice, many of the court hearings are gross miscarriages of justice and result in arbitrary detention. In addition, JDA provides for placement of children in homes for temporary placement of juveniles pending hearings. These detentions, which may last for up to two months, are not subject to judicial control and are based on a police order if they are for a short period of time or on a prosecutor’s permission if they exceed 24 hours. Most of the flaws of the JDA procedure for deprivation of liberty of juveniles are at present under review by the European Court of Human Rights in the case of *A. and others v. Bulgaria*.⁷⁰ In 2008, the Committee on the Rights of the Child (CRC) made a number of recommendations to Bulgaria: a thorough reform of the procedure for indicating correctional measures in Bulgaria, including withdrawing the notion of anti-social behaviour; guaranteeing that children under the age of fourteen years are totally treated outside of the criminal justice system on the basis of social and protective measures; setting up of juvenile courts with specialized judges for children and using deprivation of liberty, including placement in correctional-educational institutions, as a means of last resort.⁷¹ None of these recommendations have been implemented by Bulgarian authorities.

Children in Bulgaria can also be placed in state institutions for educational supervision. These include homes for children deprived of parental care, including children with mental disabilities and crisis centres which, at least in theory, are designed to host children who have suffered abuses – domestic violence or trafficking. In practice, children with “anti-social behaviour” too are placed in the 11 crisis centres that are now in operation. The placement procedure includes a possibility for initial placement for up to one month through an administrative decision of the head of the regional social assistance director, who, within this period, ought to apply to the district court for confirmation. In practice, some directors do not apply and even where courts receive such applications, this happens with significant delay or the courts themselves do not decide the case promptly as provided for by law. In some cases the courts never hear the case. Thus, placement in crisis centres for children often amounts to arbitrary detention.

⁶⁸ ECtHR, 36760/06. This case was referred to the Grand Chamber and the hearing took place on 9 February 2011.

⁶⁹ According to the official data from the National Statistical Institute for 2008 a total of 296 children were punished under the JDA for ‘escape from home’; 268 – for ‘escape from school’ and 27 – for ‘homosexuality’.

⁷⁰ ECtHR, 51776/08. This case was given a priority by the court in accordance with Rule 41 of the Rules of court and the decision is pending.

⁷¹ CRC, ‘Conclusions and Recommendations on Bulgaria’, CRC/C/BGR/CO/2, 23 June 2008, § 69.

3.2. Abusive arrests by the police during the campaign to fight organised crime

When in the summer of 2009 the present government came to power, it declared as one of its priorities combating corruption and organised crime. While there can be no doubts about the necessity and the legitimacy of these goals, their achievement should not undermine the rule of law and human rights. Unfortunately, just the opposite happened. In the past two years, there has been a drastic increase in the public display of police brutality and arbitrariness during the arrest of perpetrators of allegedly serious crimes. The related police operations are usually heavily publicised, video-taped, and subsequently broadcast on various national media in an attempt to demonstrate the efficiency of police campaigns targeting corruption and organised crime.

Former defence minister Nikolay Tsonev, for example, was arrested in the hospital, while undergoing a regular medical check-up. He was not only handcuffed and told to lie on the floor despite the fact that he was not armed, but the entire police action was videotaped and disseminated through national media outlets. The prosecutor who was present at the scene of arrest even made a series of opprobrious statements against Tsonev. ‘Today is Maundy Thursday, a fine day before Good Friday as you can see. So, today we will crucify three men [...] You, Mr Tsonev, will be convicted. [...] And since you are a true criminal, [...], just like any criminal, you should get down on the floor!’, said prosecutor Roman Vasilev.⁷² The formal charges against Tsonev were pressed several hours *after* his being declared a criminal by the prosecutor. Afterwards, the only action taken against Vasilev by the Supreme Judicial Council was reprimand. Tsonev was subsequently acquitted on all charges by Sofia Military Court.⁷³

Late in the evening of 23 July 2010, police broke into the house of Mustafovi family in the town of Kardzhali in an attempt to arrest alleged pimps and sex workers. No such people could be found in Mustafafova’s home, but still police officials assaulted and inflicted serious injuries upon Shirin Mustafafova. In response to a complaint filed by the victim, three days later, the Minister of Interior publicly apologised, deeming the arbitrary police action ‘a mistake’ – the officers had entered the wrong apartment. Yet, he added that ‘the true violation, of which the police officials are guilty is their failure to issue a report and a record of proceedings. That is why they only received a written warning – our investigation has determined that in Mustafafova’s case, there was no police brutality’.⁷⁴

In another widely publicised case, on 31 March 2010, Borislav Gutsanov, a prominent businessmen and political activist from the city of Varna, was arrested in his home. A group of heavily armed policemen with balaclavas broke into his house early in the morning and raided the bedroom of Gutsanov, while screaming commands that caused psychological trauma to the arrestee’s two minor daughters – five and seven years of age.⁷⁵

The abovementioned cases provide vivid illustration for the general practice of abusive arrests of individuals in situations, in which they neither carry arms on their persons, nor resist, nor attempt to flee. As a result, not only the arrestees themselves experience trauma and

⁷² The complete videotape from Tsonev’s arrest is available at < <http://jaak.blog.bg/lichni-dnevnici/2010/04/01/arest-na-conev-video.521756>> (26 May 2011).

⁷³ ‘Former Bulgarian Defence Minister Acquitted on All Charges by Sofia Military Court’, *The Sofia Echo*, 7 March 2011, < http://sofiaecho.com/2011/03/07/1054786_former-bulgarian-defence-minister-acquitted-on-all-charges-by-sofia-military-court> (26 May 2011).

⁷⁴ Martin Krastev, ‘Report No. 3 – the Case of Mustafafova’, BHC, Sofia, 12 October 2011, < <http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=obektiv18321>> (26 May 2011).

⁷⁵ Martin Krastev, ‘Report No. 3 – the Case of Boris Gutsanov’, BHC, Sofia, 24 November 2011, < <http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=obektiv18322>> (26 May 2011).

humiliation, but so do their nearest of kin and household members, who are usually not suspected perpetrators of any crime. The persistent attempts by the Ministry of Interior to exculpate and cover the misconduct of police officers cast an even thicker shadow on the arbitrary and degrading arrest issue.

3.3. Material conditions in prisons and investigation detention facilities

BHC visits prisons and investigation detention facilities regularly since 1997. The penitentiary institutions in Bulgaria are largely obsolete, insanitary, overcrowded, and have substantial deficits in the provision of security and medical care. Most existing prisons and detention centres are housed in old buildings, the dire state of which, despite attempts at renovation, cannot meet international standards for treatment of prisoners. The construction of new facilities in the majority of locations (including the prisons in Pleven, Varna, and Burgas) is the only solution to the gravest problems – overcrowding and obsolescence. Although the report issued following the visit of the European Committee for the Prevention of Torture (CPT) in 2008 urged Bulgarian authorities ‘to step up their efforts to improve the situation’,⁷⁶ improvements remain intangible and confined primarily to the adoption of several strategic and programme documents, including the 2010 Programme for Improvement of Conditions at Places of Deprivation of Liberty.

Such ambitious programmes, alongside with the 2009 *Enforcement of Sentences and Detention under Remand Act*⁷⁷, however, have contributed little to the amelioration of the penitentiary system in Bulgaria. Out of the 12 prison facilities, accommodating an inmate population of 9,006,⁷⁸ none were built in the past 20 years. The prison buildings in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna, and Burgas were built in the 1920s and 1930s, while the Sofia prison is a century old. Over the past years, the reduction of the total number of inmates, as well as the extended use of prison dormitories, curbed the overpopulation to an extent. Nevertheless, in 2011, the living space in the cells of the Varna, Sofia and Pleven prisons remains insufficient, and requires the use of double and even triple bunks – a clear indicator of unsustainable overcrowding. The explanatory notes to the recent Strategy for the Development of the Correctional Facilities point out that the living space in most cells is approximately 2 sq. m. per person, while the recommended standard is 6 sq. m.⁷⁹ At the same time, the recent inspection at the Varna prison, carried out by the BHC penitentiary institutions research team at the end of September 2010, determined that the average living space per person is 1 sq. m.⁸⁰ In the Burgas facility, the corresponding figure is just below 2 sq. m.

Sanitary conditions in prisons are too substandard. Not only most cells do not have drinking water, but their windows are too small to provide fresh air and sunlight sufficient for all the inmates. In Varna, most cell doors are perforated due to rodent infestation, while in the Pleven facility, there are no lavatories in the cells and at night, usually up to 20 inmates have to share one bucket for their physiological needs in front of each other. Persisting budget deficits have resulted in indebtedness to utilities providers and have prompted the introduction of regular water and electricity cuts, whereby inmates have access to cold, and rarely hot

⁷⁶ CPT, ‘Report to the Bulgarian Government on the Visit to Bulgaria from 15 to 19 December 2008’, Council of Europe, Strasbourg, 2010, p. 9.

⁷⁷ Art. 43 of the act provides explicit regulation for the living space and conditions for every inmate.

⁷⁸ GDEP, ‘Prisons’, available at < <http://www.gdin.bg/Pages/Prisons/Default.aspx>> (18 May 2011).

⁷⁹ Ministry of Justice, ‘Strategy for the Development of the Correctional Facilities 2009-2015’, MJ, Sofia, 2008, < http://www.dkiad.mvr.bg/NR/rdonlyres/1358D922-9BE2-43C1-A4CA-C721BFB10B6E/0/Stra_za_mestata_za_livavane_ot_svoboda.pdf> (18 May 2011), p. 4.

⁸⁰ Interview, Stanimir Petrov, project coordinator, Sofia, 18 May 2011.

water for only a few hours daily. This furnishes substantiation for the CPT finding that the overarching problem in the Bulgarian penitentiary system is inadequate financing from the state budget, ‘there being insufficient money for prisoners’ food, clothing, health care and the refurbishment of the prison estate’.⁸¹

In respect of health care, prisons remain isolated from the national healthcare system in terms of facility standards, administration, provision of medical check-ups, statistics, prophylactics, and preventive care. Most medical centres within the prisons fail to meet the requirements of the *Medical Institutions Act*. 2010 witnessed a sharp increase in the number of complaints to BHC by inmates, regarding healthcare provision.⁸² The underlying reasons are staff and equipment deficiencies, as well as unavailability of specialised assistance. Substance (heroin) abuse, especially in the Sofia prison, is reportedly on the rise⁸³ and the lack of relevant statistics produces deplorable neglect of the issue. The provision of methadone treatment is highly inconsistent; there are no needle-exchange programs, and no counselling. No independent control is exerted to ensure adequate provision of services that affect directly inmates’ health status. In May 2011, all the inmates at the Sofia prison lost their health insurance rights as an employee of the facility, charged with the task of making monthly payments to the National Health Insurance Fund, had not performed his duty for over three months.⁸⁴

Security personnel in prisons are badly trained, and combined with the overpopulation and understaffing, this leads to inadequate provision of protection where necessary. Thus, violence among inmates, as well as illicit drug trade within prisons, remains difficult to curb. In September 2010, in the Varna facility, one prison guard was responsible for 300 inmates. At the same time there exist the so-called ‘VIP cells’, whereby corruption enables certain inmates to be issued with forged medical certificates, which make it possible for them to occupy single, refurbished cells, and have their meals be delivered from outside the facility. Widespread corruption within penitentiary institutions in Bulgaria produces such paradoxical inequalities, which are usually incorrectly attributed solely to the lack of financial resources.

The living conditions in investigation detention facilities (IDFs) are even poorer. The detention centres in Gabrovo, Petrich, Slivnitsa, and Pazardzhik are located underground, their cells have no windows, and detainees are designated a living area of less than a square metre per person. At the same time, the number of detainees nationwide is rapidly increasing, especially in IDFs in several big cities, with the number of detainees exceeding the capacity of the cells.⁸⁵ One of the underlying reasons is that IDFs in Bulgaria are used not only for detention on remand, but also for 72-hour police/prosecutor detention, and for detention of persons transferred ‘by delegation’ for trial or pre-trial proceedings.

In this case only one solution seems viable – the construction of new detention centres. Upon completion of the former government’s term in 2009, the Ministry of Justice revealed its projects for construction of new IDFs in Petrich, Gabrovo, Lovech, Plovdiv and Shumen, and for the improvement of the conditions in the ones in Vidin, Ruse, Haskovo and Razgrad. But none of these plans were implemented as of May 2011.

⁸¹ CPT, ‘Report to the Bulgarian Government’, p. 31.

⁸² BHC, ‘Annual Report for 2010’, Bulgarian Helsinki Committee, Sofia, 2011, p. 25.

⁸³ ‘Over 30 People Infected with HIV in the Sofia Prison’, *Blitz*, 27 March 2011, < <http://www.blitz.bg/news/article/103692>> (19 May 2011).

⁸⁴ ‘Health Insurance Funds for the Sofia Prison Inmates Missing’, *Glasove*, 18 May 2011 < <http://glasove.com/article-13822.php>> (19 May 2011).

⁸⁵ BHC, ‘Annual Report for 2010’, p. 26.

3.4. Alternatives to detention in addressing juvenile crime

Criminal courts in Bulgaria can sentence a person who is between 14 and 18 years of age to effective imprisonment for committing a crime. The age of criminal responsibility is 13 years. However, both under the criminal law and under the *Juvenile Delinquency Act* a child below 14 years of age may be involuntarily sent by a court to a correctional school (social-educational boarding school or correctional boarding school) for up to three years. These schools are closed institutions and placement in them constitutes effective deprivation of liberty. Children, as young as eight years of age can be placed in correctional schools for committing crimes either directly by the criminal courts in a way of diversion or in the course of a separate procedure under the JDA.⁸⁶

For the 2010/2011 school year, the total number of juveniles placed in correctional schools was 355, a decrease from 476 in 2008/2009 school year.⁸⁷ This decrease should be examined against the backdrop of the negative demographic trends in Bulgaria over the past two decades, which have affected particularly school-age children. It should be taken into account that the number of children in some of the institutions hosting children with “anti-social behaviour”, such as the crisis centres for children⁸⁸ has increased. The latter hosted only 10 children in 2006, whereas in 2010, the number of placement orders to these institutions was 259.⁸⁹

3.5. Living conditions in institutions for persons with mental disabilities

The persistent and often arbitrary placement in social care homes of people with mental disabilities (both children and adults) is among the most serious problems vis-à-vis the right to liberty and security of person of some of Bulgaria’s most vulnerable citizens. Currently, placement is carried out in accordance with a badly regulated administrative procedure.⁹⁰

Institutional care prevails, while community day-care centres are very few. According to SAPC, at the end of 2009, there were 94 day-care centres for children with disabilities (mainly with intellectual disabilities) providing services to 2,253 children altogether.⁹¹ In comparison, the institutions for children with disabilities (between the ages of 3 and 18) hosted 956 children, 879 of whom with intellectual disabilities, 396 – with physical and multiple disabilities, and 465 – with mental and neurological problems. The institutions for children under three years hosted 2,334 children, while 3,440 were accommodated in the institutions for children between 7 and 18, deprived of parental care.⁹²

As the abovementioned statistics suggest, institutionalised care remains a major feature of the social services delivered to persons with mental disabilities. The quality of these services in institutions, however, is deplorable across the board – staff negligence and dire living conditions in most institutions pose an insurmountable barrier to the treatment of residents as persons with human dignity. Dignity concerns aside, the abysmal state of this sector of social

⁸⁶ For more details on the Bulgarian juvenile justice system cf.: Krassimir Kanev, Daniela Furtunova, Polina Russinova, Yordanka Bekirska, ‘Bulgaria’, in: *Juvenile Justice Systems in Europe: Current Situation and Reform Developments*, Vol. 1, Forum Verlag Godesberg, Monchenglbad, 2010.

⁸⁷ Information from the National Statistical Institute, available at < www.nsi.bg > (1 June 2011)

⁸⁸ See section 3.1. *supra*.

⁸⁹ BHC obtained this figure in the course of its monitoring of crisis centers for children in Bulgaria between November 2010 and April 2011.

⁹⁰ See section 1.2.: ‘Discrimination of institutionalised persons with mental illnesses and other disabilities’.

⁹¹ SAPC, ‘Statistics’, available at <<http://sacp.government.bg/programi-dokladi/statistika/>> (1 June 2011).

⁹² *Ibid.* Furthermore, in 2009, the Child Protection Departments registered the assessment as disabled of about 5,661 children.

care provision produces an environment conducive to institutional syndrome aggravation, physical injuries, and death.

The homes for children with mental disabilities in Bulgaria continue to maintain a practice of malnourishment, violence, physical restraint, and treatment with incapacitating drugs. Results from a joint BHC-Prosecutor's Office investigation from 2010 indicate that over the past ten years, 238 children with disabilities have died in social care homes: 31 children have died of systematic malnutrition; 84 – due to general staff negligence; 13 – of infections resulting from bad hygiene; 36 – of pneumonia through persistent exposure to cold or long-term immobility; 6 – in accidents such as freezing to death, drowning, and suffocation; 2 – as a result of violence. The causes of 15 of the deaths remain unknown.⁹³ Sixty three per cent of all deaths occurred in institutions, as opposed to hospitals. This alarming percentage comes to say that sick children tend not to be hospitalised, regardless of the gravity of their health condition, and that they are left to die in the institution, or hospitalised too late. Since a significant proportion of the deaths occurred during the cold months of the year, it is clear that the very basics, such as adequate heating, food staples, and vital medication are not provided.

At the same time, highly damaging neuroleptic drugs are indiscriminately overused. When a boy from the Sveta Petka facility in the village of Mogilino was admitted to the local hospital to be treated for bronchopneumonia in March 2008, the doctors determined that he was suffering from 'benzodiazepine intoxication'.⁹⁴ Although the facility in Mogilino was closed down in 2009 following an international civil society and media outrage,⁹⁵ caused by a BBC documentary from 2007 – *Bulgaria's Abandoned Children*, similar practices continue with impunity in other institutions. Towards the end of 2010, in more than eight homes, unlawful physical and chemical immobilisation as a means of controlling children's behaviour was still taking place. The 17 recorded cases of immobilisation included tying up to beds, wheelchairs and other objects, as well as using straitjackets in addition to the arbitrary administration of heavy neuroleptic drugs.

Although the quality of life of institutionalised children in Bulgaria is substandard mainly due to the quality of care provided to them by institution's staff, the very material conditions of most homes also constitute a violation of the right to security of person. Despite most facilities' recent renovations, the repairs are often botched and reveal an inefficient use of available financial resources. Immediately after the completion of the renovation of the Gomotartsi facility, near the town of Vidin, for example, the BHC research team observed piping failures: water was running down some of the walls. In the Prostorno home, near the town of Razgrad, the unparalleled dedication of the personnel was in sharp contrast to the material setting at the institution. Recent inspections, endorsed by expert opinion, have shown that overcrowding and the small size of most rooms in the facility prompt residents to commit acts of (self-)aggression.⁹⁶

Similarly disquieting conditions were recorded by a team of BHC and Bulgarian Institute for Relations between People (BIRP) researchers, who throughout 2008 and 2009 monitored

⁹³ Between March and September 2010, BHC conducted comprehensive field research of the state of all institutions for children with mental disabilities in Bulgaria. The visits were carried out in collaboration with representatives of the Prosecutor's Office. Data presented in this section was collated in a special database, which is to be used by the Prosecutor's Office in initiating criminal proceedings. All relevant statistics and reports are available (in English) at < <http://forsakenchildren.bghelsinki.org/en/>> (16 May 2011).

⁹⁴ Bulgarian Helsinki Committee, 'Inspection Report from Sveta Petka', BHC, Sofia, 2010, p. 6 < http://forsakenchildren.bghelsinki.org/wp-content/uploads/2010/09/Doklad-DDMUI-Mogilino-10.09.2010_bd.pdf> (16 May 2011).

⁹⁵ In fact, a protected home, where 10 of the former residents of the children care home live, replaced the notorious institution in Mogilino.

⁹⁶ Interview, Aneta Genova, Coordinator of the field research for all BHC inspections of institutions for children with disabilities in 2010, Sofia, 17 May 2011.

institutions for elderly people with mental disabilities.⁹⁷ At the institution in the village of Goren Chiflik, adjacent to the newly-open protected home for eight of Goren Chiflik's clients, there is a one-storey housing edifice, built from former stables and a courtyard. This section is designated for those with the most severe disabilities and remains locked throughout most of the day. During a visit in the spring of 2009, researchers found traces of feces on the walls, bed linens, and floors. According to the researchers, five women needed to be urgently hospitalised since a long-time national mental health consultant evaluated the women's remaining at the social home as a life risk. In August 2009, the research team registered slight improvements: some of the abovementioned women were accommodated at a newly built transitional facility. Yet, 25 users were still living in what they described as 'the horror corner'.⁹⁸

Not only the material conditions, but the very location of some institutions violates their residents' right to personal liberty and security, and to private and family life. A 2002 Amnesty International report highlighted the case of the social care home in Razdol, which is in an isolated mountainous area near the Bulgarian-Macedonian border that is difficult to reach by road. The remoteness of the facility renders visits to or by physicians or therapists highly unfeasible, while grocery delivery is often obstructed by the snowfalls in winter. Furthermore, in 2002, Amnesty found that in Razdol, there was also no 'space, even toilets, which afforded privacy'.⁹⁹ Nine years later the institution is as isolated as before. A segment of the facility has been renovated, but the rest of the building remains crammed with people, whereby eight people are forced to share a small, decrepit living space.¹⁰⁰ Equally isolated and dilapidated is the Pastra facility, which despite persistent pressure from the European Committee for the Prevention of Torture is still operational.¹⁰¹

4. Right to privacy

4.1. Compatibility of the amendments to the *Special Surveillance Means Act* with the provision of the Covenant

The *Special Surveillance Means Act* (SSMA) of 1997 is currently the principal legislative enactment regulating the use of special means of surveillance by security services in Bulgaria. It has undergone some minor amendments throughout the years, with more extensive ones in 2003 and 2009. The essential provisions of the act, however, have remained intact since its adoption. They allow for arbitrary use of special surveillance means (SSM). The recent amendments from 2009 have led to an increased frequency and arbitrariness in state security agencies' use of SSM. Through the expansion of the grounds for non-notification of the use of surveillance, the cases whereby citizens are notified that state security agents have intruded in

⁹⁷ The resultant report, 'Evaluation of the Needs of the Institutions, Engaged in the Process of Deinstitutionalised of the Care for Persons with Mental Disabilities' is available (in Bulgarian only) at < http://www.bghelsinki.org/upload/resources/Needs_assessment_2009.doc> (17 May 2011).

⁹⁸ Ibid. p. 120.

⁹⁹ Amnesty International, 'Bulgaria: Far from the Eyes of Society: Systematic Discrimination against People with Mental Disabilities', Amnesty International, 2002, p. 37, < <http://www.amnesty.org/en/library/asset/EUR15/005/2002/en/be2a743b-d81c-11dd-9df8-936c90684588/eur150052002en.pdf>> (17 May 2011).

¹⁰⁰ Roumen Stoichkov, 'Razdol Village and the Home for Elderly People with Mental Disabilities', *Bulgarian National Radio*, 4 February 2011, < <http://bnr.bg/Audio.aspx?lang=1026#http://bnr.bg/sites/horizont/Shows/Current/BeforeEveryone/Society/Pages/Razdol.aspx>> (17 May 2011).

¹⁰¹ A more detailed description of the living conditions in Pastra can be found in section 3.2. of this report.

their private life have dwindled. The ineptitude of the body that currently oversees the use of SSM in Bulgaria has brought the proper regulation over the use of surveillance to a bare minimum. Also, the lack of comprehensive judicial control in that domain has given free rein to *pro forma* permissions for SSM use in response to arbitrary, unreasonable requests, without judges having had access to the pre-trial/operative cases. The SSMA does not explicitly provide for justifying any permission after the case has been researched, so that the judge can crosscheck the declarant's statements and the case facts. Due to all of the above, there has been a substantial deterioration in the capacity of the law to provide citizens with protection against what the Covenant defines as 'arbitrary [...] interference with his privacy, family, home or correspondence'.¹⁰²

In October 2009, the legal conditions for notification of citizens who are under surveillance were adversely changed. SSMA in its previous form, which was still incompatible with international human rights law norms, did not provide for unconditional notification of the persons under surveillance. The regulative body had to inform citizens for the use of SSM against them only if that use was unlawful at their own judgment and only if such notification did not constitute a threat to the purposes of the surveillance. With the recent amendments in the pertinent legislation, non-notification became legal also in cases, in which there is perceived threat for discovery of the operational techniques or the technological means of surveillance, as well as a threat for the life or health of an agent under cover and his or her relatives.¹⁰³

In November 2009, the parliament amended SSMA in an attempt to readjust the legal and institutional framework, so that the control over the use of surveillance can be restricted. According to the adopted amendments, the independent National Bureau that used to oversee the use of SSM, as prescribed by the ECtHR judgment on the *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria* case,¹⁰⁴ was closed down. Some of its functions were delegated to a new parliamentary sub-commission, comprised exclusively of representatives of the main political parties. The amended law stipulates that the new regulative body instead of giving 'binding instructions, related to the improvement of the regimen for use and application of the special surveillance means' as the National Bureau could, now could only 'make suggestions for improving the procedures for using and applying of special surveillance means'.¹⁰⁵ What is more, with a membership of only five, the new parliamentary sub-commission, does not have the capacity to effectively control the use of SSM.

In May 2010, a new set of legislative amendments pertaining to the use of SSM came into force. Art. 250a and art. 250e in the *Electronic Messages Act* (EMA) followed the Supreme Administrative Court's rejection of art. 5 of Regulation No. 40 from 7 January 2008. The decision was in respect of the type of data and the way it is being stored or made available to relevant officers by the providers of public networks for electronic messaging and/or services for the purposes of national security and criminal investigation.¹⁰⁶ In the case of investigation

¹⁰² ICCPR, art 17.

¹⁰³ Ibid., art 34z, para 2.

¹⁰⁴ The case concerned a complaint about the SSMA of 1997 as it provided for legal surveillance measures against the association at any point in time without notification. In its judgment, the court opined that 'in the context of secret measures of surveillance by public authorities, because of the lack of public scrutiny and the risk of misuse of power, the domestic law must provide some protection against arbitrary interference'.

¹⁰⁵ *Special Surveillance Means Act*, 2009, art 34j, para 4.

¹⁰⁶ Decision No. 13627 from 12 November 2008 of the Supreme Administrative Court was in response to a complaint lodged by the Access to Information programme.

of serious or computer crimes, the current version of EMA allows for access to traffic data¹⁰⁷ to be requested by the pre-trial proceedings officers directly from the providers of public networks for electronic messaging or other services. At the same time, the *Criminal Procedure Code* requires providers to deliver before the court officers computer data, including traffic data, which might be valuable for the case.¹⁰⁸

Such provisions, alongside with the persistently flawed legal framework of SSMA have resulted in mass human rights violations in the context of surveillance operations. Over the past two years, the number of permissions allowing the use of SSM has tripled (see *Fig. 2*), while in 2010 only 12 per cent (a three per cent decrease since 2008) of the total number of permitted SSM investigation produced material evidence.¹⁰⁹

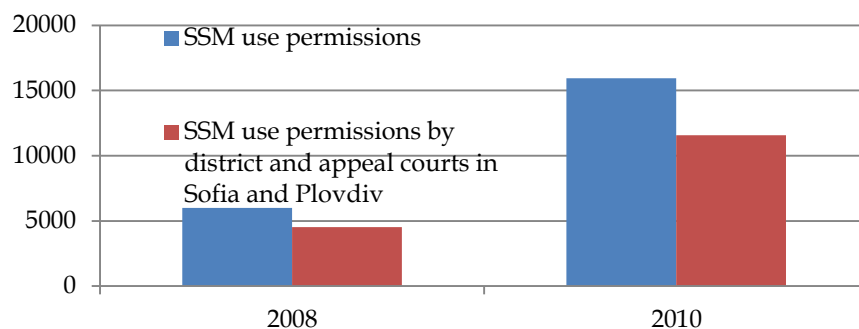


Fig 2. Comparative illustration of SSM permissions in 2008 and 2010.¹¹⁰

The abovementioned statistics further illustrate the inability of SSMA, alongside with the *Criminal Procedure Code*, to effectively prevent citizens from being arbitrarily put under surveillance. Furthermore, SSMA remains unclear in its definition of the type of offences that require surveillance, as well as the type of persons against whom such measures can be taken. According to the act, SSM can be used in respect of ‘persons and places, related to national security’.¹¹¹ The notion of ‘national security’ however is defined very broadly under the law and may, thus, allow the (unnecessary) use of SSM in cases where a crime has not been committed.

4.2. Forced evictions of Roma from their homes under the pretext of ‘illegal status’

Over the past three years, the number of forced evictions in predominantly Roma neighbourhoods has been on the rise. This inhumane practice, which constitutes a blatant violation of the right to privacy, family, and home, guaranteed by art. 17 of the Covenant, further persecutes an otherwise marginalised community, whose members’ lives are confined to the informal settlements and shanty towns. This practice of forced evictions ‘arbitrarily interferes with the Covenant rights of the victims of such evictions, especially their rights

¹⁰⁷ Traffic data refers to information about: the persons a particular subscriber (phone or internet user) has communicated with, how long their exchange was, where the subscriber was located and what type of device was being used.

¹⁰⁸ *Criminal Procedure Code*, 2006, art 159.

¹⁰⁹ ‘SSM Permissions Have Tripled for Two Years’, *Praven Sviat*, 7 February 2011 < <http://www.legalworld.bg/show.php?storyid=22476%3Cbr%20/%3E> > (4 May 2011).

¹¹⁰ Grozdan Iliev, ‘Speech before the National Conference of the Chairs of District and Appeal Courts’, Prosecutor’s Office, Tsigov Chark, 6 February 2011.

¹¹¹ *Special Surveillance Means Act*, art 12, para 3.

under art. 17 of the Covenant¹¹², while further violating art. 26 of Covenant with its targeting of racial minorities.¹¹³

In most cases, the houses in Roma neighbourhoods were demolished under the pretext of the so called ‘illegal status’ of their occupants, or the lack of legal grounds for residence, irrespective of the fact that these houses are the only long-standing homes of their inhabitants.¹¹⁴ What is more, the public authority has failed to ensure any alternative housing for the affected families. Evicted residents have not received any protection from the governmental institutions and the judicial authorities. According to international law, the relevant authorities must provide evicted residents, *inter alia*, with ‘(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used’.¹¹⁵ Furthermore, during the eviction proceedings, tenants retain the right to privacy while residing in their homes.

Yet, on 16 October 2009, in the Sofia neighbourhood Voenna rampa, municipal authorities demolished a house in which 32 Roma residents had lived since 1991 without offering them any alternative. The justification for the demolition is that the dwellers had entered the domicile unlawfully and the current state of the house itself was hazardous for their lives. The eviction took place on a particularly cold and rainy day,¹¹⁶ and was aided by police forces, who also beat up some of the citizens.

In September 2009, 42 Roma houses were demolished in the Gorno Ezerovo Roma settlement in the city of Burgas.¹¹⁷ Their inhabitants, including elderly people and children, were left homeless. The same month, the authorities forcibly evicted another 15 Roma households in the Meden Rudnik neighbourhood in the same city. All the evictions were overseen by the police, while in Gorno Ezerovo, security forces used excessive force against the residents. According to a report by Amnesty International, ‘the authorities have not offered alternative housing, remedies or compensation to any of those who were forcibly evicted’.¹¹⁸

One year after the Gorno Ezerovo and Meden Rudnik evictions, the municipal authorities in the town of Yambol evicted the inhabitants of an entire apartment building under the pretext of illegal occupation and for the purposes of the demolition of the allegedly ramshackle domicile.¹¹⁹ As their homes were demolished, some of the Roma families organised an impromptu camp, comprised of huts put together from salvaged building materials, in a nearby open space. According to Ilia Iliev, chair of the DROM political party, which brought a case to ECtHR, the inhabitants of apartment building no. 20 were residing legally there since the 1990s. Iliev further defined the interference of the authorities as

¹¹² CCPR, ‘Concluding Observations: Kenya’, 29 April 2005, UN Doc CCPR/CO/83/KEN, §§ 22.

¹¹³ CCPR, ‘Concluding Observations: Israel’, 29 July 2010, UN Doc. CCPR/C/ISR/CO/3, §§ 24.

¹¹⁴ See, for example, the case of apartment building No.20 in Yambol, discussed below.

UNCHR ‘Report of the Working Group on Arbitrary Detention’, 21 January 1992, UN Doc E/CN.4/1992/20

¹¹⁵ Committee on Economic, Social and Cultural Rights ‘General Comment 7: Forced Evictions, and the Right to Adequate Housing’, 1997, UN Doc. E/1998/22, §§ 15.

¹¹⁶ An overt non-compliance with international law: ‘evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise’. Ibid.

¹¹⁷ Amnesty International, ‘Bulgaria: Families Have Nowhere to Go’, 30 September 2010
< <http://www.amnesty.org/en/library/asset/EUR15/001/2010/en/21197ad9-0c23-4270-b09c-ef6b5413cbba/eur150012010en.pdf>> (5 May 2011).

¹¹⁸ Ibid.

¹¹⁹ ‘Bulgarian Party Approaches ECtHR over Roma Scandal in Yambol’ *Novinite*, 21 September 2010
< http://www.novinite.com/view_news.php?id=120368> (5 May 2011).

‘unlawful confiscation of property’ as some of the residents held legitimate title deeds.¹²⁰ As of April 2011, even the temporary tented camp of the former block no. 20 residents has been dismantled by public authorities,¹²¹ whereby the evicted are once again rendered homeless and vulnerable.

Five Roma houses in the Varna neighbourhood of Maksuda were also bulldozed after numerous eviction actions portended the eventual demolition on 2 March 2010. The eviction of the residents of Maksuda is the result of longstanding municipal land restitution problems and road construction plans. Although the first scheduled demolition was cancelled, later on some 35 Roma residents were forcefully taken out of their homes. Once their houses were destroyed, the Varna municipality had virtually no plan for relocating the former residents of Maksuda – the latter were forced to found a new ghetto in proximity to the railway tracks.¹²²

Throughout Bulgaria, a lot of Roma residents, who have not yet experienced forced evictions, live in the constant fear that they might lose their homes and thus, their rights guaranteed by art. 17 of the Covenant are persistently violated. Since 2005, the residents of Batalova Vodenitsa neighbourhood in Sofia have been receiving eviction notices on a regular basis, while no municipal plans for alternative temporary or permanent relocation have been communicated to them. In 2008 the ECtHR indicated interim measures, which stopped the eviction in the last moment before their homes were bulldozed. A similarly entangled eviction process has been going on in the Dobri Zheliyazkov neighbourhood in Sofia, where 15 families are under eviction threat from their lifelong homes, as the latter supposedly ‘interfere’ with the garage space of a newly-built adjacent apartment building.¹²³ All of the eviction cases outlined above illustrate the reluctance of relevant authorities to comply with international legal standards regarding the right to privacy and the violence-free procedure for carrying out evictions. Particularly disturbing is the public authorities’ neglect towards exploring, in conjunction with the affected, all feasible alternatives to the evictions, ‘with a view of avoiding, or at least minimizing, the need to use force’.¹²⁴

5. Freedom of religion and protection against discrimination on the grounds of religion and belief

5.1. Compatibility of the Religious Denominations Act of 2002 with the Covenant

The *Religious Denominations Act* (RDA), which was adopted on 20 December 2002 and came into force on 1 January 2003, envisages two pathways for the registration of religious organisations in Bulgaria. One of them is designed for all religious denominations, and the other – specifically for the Bulgarian Orthodox Church (BOC). According to the first provision, ‘religious denominations can be registered at the Sofia City Court in accordance with art. 49 of the *Code of Civil Procedure* (CCP)’¹²⁵. Up to date, there are 107 religious

¹²⁰ ‘Why DROM is Suing the Mayor of Yambol’, *TV 7*, 21 September 2010 < <http://tv7.bg/news/106932.html> > (5 May 2011).

¹²¹ Romyana Stefanova, ‘The Tented Camp of Apartment Building No. 20’s Residents Has Been Demolished’, *Dnes*, 19 April 2011 < <http://www.dnes.bg/stranata/2011/04/19/syboriha-palatkoviiia-lager-na-romite-ot-blok-20> > (5 May 2011).

¹²² Spas Tsvetkov, ‘The Invisible Ghetto’, *Obektiv*, March 2011 < <http://www.bghelsinki.org/index.php?module=pages&lg=bg&page=obektiv18605> > (10 May 2011)

¹²³ Interview, Daniela Mihaylova, representative of the Initiative for Equal Opportunities that lodged an application to ECtHR on behalf of the residents, Sofia, 11 May 2011.

¹²⁴ CESCR ‘General Comment 7’, §§ 14.

¹²⁵ *Religious Denominations Act*, 2002, art 15, para 1.

organisations, excluding BOC, that have been registered through this procedure. It is only in the case of BOC that the legislation provides an alternative, fast-track registration route. While other religious organisations can become legal entities only upon completion of the legal registration procedure, BOC is granted its legal status *ex lege*.

RDA was passed with the aim to unify the split BOC. It therefore recognizes by law only one of its factions. According to art. 10.1 this is the one that has as a Patriarch the Metropolitan of Sofia and which is recognized by the Ecumenical Patriarch in Istanbul, i.e. the Patriarch, which the splinter group (the so-called “alternative synod”) does not want to have as a spiritual leader. Soon after the law passed, in July 2004, police, acting on orders by the then Chief Prosecutor, expelled members of the “alternative synod” from all the churches, which they controlled. In January 2009 the ECtHR condemned Bulgaria for its willingness to bring the divided religious community under a single leadership through administrative coercion and found a breach of art. 9 of the ECHR.¹²⁶ Although the court found the RDA to be incompatible with international standards on freedom of religion and belief, the government has not taken any measures to bring it in conformity with them.

Para. 3 of the temporary and final provisions of RDA allow for government interference in the internal affairs of religious communities by prohibiting splinter groups to use the name and to control any assets of the religious denomination. Art. 36, para. 1 of the law prohibits anybody to “act” in the name of a religious denomination without “representative powers”.

State funding for religious organisations is discriminatory. RDA provides for the possibility for state funding and other forms of support for registered religious organisations in their religious, social, educational, and healthcare activities through exception from taxation, customs duties, and other financial and economic relief.¹²⁷ The criteria according to which such support is to be given, however, are not specified – they are arbitrarily included in every annual budget. In the budget for 2011, 79 per cent of the subsidies designated for religious organisations were allocated to BOC, 6 per cent were allocated to the Muslim denomination, 30,000 BGN were allocated to the Judaist, and 40,000 BGN to the Armenian Church. The remaining 104 registered religious formations, many of them much bigger than some of the above, were offered to share the meagre sum of 40,000 BGN.¹²⁸

RDA has several other restrictive and discriminatory provisions, which may give rise to violations of art. 18 and art. 2 of the Covenant.¹²⁹

5.2. Pervasive harassment of certain religious groups¹³⁰

Despite persistent protests on the part of minority religious communities, the latter are still subject to regular harassment from public officials and private groups, and their freedom of religion is yet to be guaranteed. The City of Burgas, alongside with relevant judicial authorities, has undertaken no measures to investigate the incident with the April 2008 letter (para. 22 of the List of Issues). The municipality has not delivered its official apology for the slanderous letter and no charges have been pressed. The Burgas Administrative Court decided on 3 November 2008 not to consider the complaint by Jehovah’s Witnesses regarding the abovementioned letter. Its motivation is that the enclosed evidence cannot prove that the

¹²⁶ ECtHR, *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, 412/03 and 35677/04, 22 January 2009.

¹²⁷ RDA, art. 25, para. 1 and art. 28.

¹²⁸ Republic of Bulgaria, ‘Annual budget 2011’, art 6, para 7, appendix No. 3.

¹²⁹ Cf. Krassimir Kanev, ‘The New Bulgarian Religious Law: Restrictive and Discriminatory’, *European Yearbook of Minority Issues*, Vol. 2, 2002/2003.

¹³⁰ See also the first video in Appendix A.

Jehovah's Witnesses mentioned in the letter and Jehovah's Witnesses Bulgaria share an identity.

The letter, which was circulated among school administrations throughout the city, defines a number of religious groups, including Jehovah's Witnesses, the Church of Jesus Christ of the Latter Days Saints, and certain Evangelical churches, as noxious to the Bulgarian nation as they fragment its integrity through religion. These misconceptions are further propagated through frequent defamatory publications by mostly local Bulgarian media. The municipal television channel of Varna, together with the most prominent newspaper in Plovdiv (the second biggest city in Bulgaria), have featured such content. On 29 March 2010, in the city of Ruse, the far-right nationalistic party VMRO organised a news conference to voice misleading information about Jehovah's Witnesses. Even though Jehovah's Witnesses have responded to many similar events by lodging complaints with local courts, no investigation has been initiated – there are no charges pressed, no court trials, and impunity prevails.

As a result, far-right and nationalist movements continue to harass minority religious groups. On 17 April 2011, VMRO organised a protest to call for the banning of Jehovah's Witnesses, right in front of the group's place of worship – the Kingdom Hall in Burgas. A group of young men with hoods raided the hall, while the onlookers not only did not prevent them from doing so, but encouraged their actions with slogans and chants. Five members of the religious community were injured and ten of the assailants were arrested.¹³¹ Although the police and the Prosecutor's Office announced that an investigation is under way, neither President Parvanov, nor the speaker of Parliament, nor PM Borisov have officially expressed any position on the disturbing incident. In this case, the initiative to combat religious discrimination remained in the hands of some religious groups and NGO networks.¹³² The Ombudsman, too, has begun an independent investigation of the case.¹³³

5.3. Attacks on Muslim places of worship¹³⁴

Government measures to combat the increasingly discernable acts of Islamophobia remain limited at best. The Declaration of the Supreme Muslim Council from 2011 details 110 cases of attacks on Muslim places of worship in the past two decades. Yet, the assailants in all of them, up to this very date, remain unknown. No one has been indicted or put to trial, no sentences have been issued and no damages paid.¹³⁵ In general, persevering violence on religious grounds is tolerated, while the Islamophobic movement gathers momentum.

In a brutal display of impudence, members of the far-right Ataka party attacked Muslims who had congregated for Friday prayer in Sofia's Banya Bashi mosque on 20 May 2011. Ataka activists put loudspeakers with patriotic music near the mosque, threw eggs and stones at the Muslims and shouted insulting slogans. The attack led to injuries of several Muslims. One MP from Ataka who attended the rally also claimed an injury. Police arrested several

¹³¹ 'Brawl between Bulgarian Nationalists, Jehovah's Witnesses Injures 5', *Novinite*, 18 April 2011, < http://novinite.com/view_news.php?id=127400> (25 May 2011). A more detailed account of the incident (in Bulgarian only) is available at < <http://www.focus-news.net/?id=n1514853>> (12 May 2011).

¹³² See, for example, the declaration regarding the incident, endorsed by a number of such organisations, which is available (in Bulgarian only) at < <http://tonyelenkov.blog.bg/drugi/2011/04/20/deklaraciia-po-povod-napadenie-nad-religiozna-obshtnost-v-bu.732951>> (25 May 2011).

¹³³ 'Ombudsman Launches Independent Investigation of the Beatings of Jehova's Witnesses', *Mediapool*, 19 April 2011, < <http://www.mediapool.bg/show/?storyid=178553>> (12 May 2011).

¹³⁴ See also the second video in Appendix A.

¹³⁵ Interview, Asan Imamov, legal consultant for the Supreme Muslim Council, and Hussein Hafyzov, secretary general of the council, Sofia, 16 May 2011.

Ataka activists who were later released.¹³⁶ Despite the widespread condemnation of Ataka for the recent incident, and the prosecuting authorities' opening of pre-trial proceedings against several assailants, arrested on the scene, it merits mention that the proceedings define the ultra-nationalists' actions as 'hooliganism' rather than discriminatory violence on the grounds of religion. Hooliganism, as defined by the *Criminal Code* of Bulgaria, constitutes acts against 'public order'.¹³⁷ What happened on May 20 is an act that violates citizens' rights, not just public order. What is more, further investigation is required regarding the official municipal permission for Ataka to hold a nationalist rally in such proximity to the mosque – an overt act of negligence vis-à-vis the systematic attacks on Muslim houses and places of worship.

6. Freedom of expression and public incitement to hatred, discrimination and violence

Despite a number of legislative barriers, hate speech towards various communities – mostly ethnic and religious minorities and LGBT – find propitious grounds in the Bulgarian public and media space. The main stipulation against racist hate speech is enshrined in the *Criminal Code*, and provides for between one and four years imprisonment and fines of up to 10,000 BGN for those that 'through speech, print or other mass communication means or through electronic communication means or otherwise propagate or incite discrimination, violence and hatred, based on racial, national, or ethnic origin'.¹³⁸ In compliance with the EU Framework Decision 2008/913/ of 28 November 2008, the Bulgarian *Criminal Code* also features a new article – 419a – which criminalises 'condoning, denying, or grossly trivialising crimes against peace and humanity'. Through this provision, Bulgarian legislation aimed at prosecuting of persons within the country, who denounce or disparage the Holocaust and other crimes against humanity. Public broadcast of hate speech is further regulated through the *Radio and Television Act* (RTA), which mandates the Electronic Media Council as the national media watchdog to issue administrative penalties for violations of the law, among which is art. 17, para. 2, prohibiting broadcasters to incite ethnic and religious intolerance.

Regardless of the existence of multi-dimensional relevant legislation, however, hate speech proliferates in a disquieting manner. Anti-Semitic statements are often made in public by ultra-nationalists and are not solely limited to the incidents, enumerated in the list of issues. Between 2009 and 2010, there have been 17 extreme acts of overt anti-Semitism. Eight of them involved insulting or defamatory writings that incite violence and are strategically placed on various Jewish heritage artefacts or in other publicly visible spaces, located in downtown Sofia, as well as in the peripheral neighbourhoods of the city.¹³⁹ Moreover, explicitly anti-Semitic titles are currently being sold in bookstores throughout the country. Apart from the seminal works of Hitler, Mussolini, and Goebbels, books by Bulgarian anti-Semitic authors¹⁴⁰ can also be found on the shelves. Mainstream politicians, too, propagate

¹³⁶ Video clips from the incident are available at < <http://www.livenews.bg/bulgaria/s/1916418927>> (20 May 2011), while an extensive photo story can be accessed at < http://www.capital.bg/multimedia/fotogalerii/2011/05/20/1093301_fotogaleriia_ataka_provokira_mjusjulma_nite_v_sofiia/> (20 May 2011).

¹³⁷ *Criminal Code*, art 325.

¹³⁸ *Criminal Code*, art 162, para 1.

¹³⁹ The Organisation of the Jews in Bulgaria, 'Anti-Semitic Acts in Bulgaria 2009 – 2010', Shalom, Sofia 2010.

¹⁴⁰ A prime example of such literature are Emil Antonov's *Their struggle or how the Jews took over the world*, Lakov Press, Sofia, 1999, and *The foundation of national socialism*, Lakov Press, Sofia, 2004, which openly admire Hitler's policies and stigmatise the Jewish community as the originators of all evils.

anti-Semitism. Far-right party Ataka's leader, Volen Siderov, for instance, published *The rule of the Mammon* and *The Boomerang of Evil*, both virulently anti-Semitic. The authors of such anti-Semitic literature not only enjoy their publication royalties, but an uninterrupted regime of impunity in respect of their otherwise unlawful incitement.

When in January 2011 BHC brought the matter to the attention of the speaker of the National Assembly Tsetska Tsacheva,¹⁴¹ she responded that according to the constitution and the statutes of the National Assembly, she is not supposed 'to assess and interpret actions, statements, or publications by members of parliament, which are not directly related to their legislative function'.¹⁴² A similar communication was exchanged between the Sofia B'nai B'rith office and the City Prosecutor's Office. In the latter's view, Siderov's books uncover 'historic data' and their content is not a 'premeditated attempt at inciting religious hatred'.¹⁴³ The only exception to the widespread practice of detachment on the part of the judiciary is the ongoing trial against Dr. Emil Antonov at Sofia City Court. His virulent anti-Semitic statements are deemed to be in breach of several provisions of the *Criminal Code*. Still, the pre-trial proceedings in Antonov's case took over two years to complete, and the criminal investigation started four years after his book's initial publication.

Administrative action by Electronic Media Council has also been taken against the SKAT television channel, notorious for its selection of programs and shows that buttress nationalistic views and formerly – the agenda of the far-right political party Ataka. Between 2002 and 2008, a total of 18 orders have been issued against SKAT TV, a third of all the 56 administrative penalties for violations of RTA by all television channels and radio stations in Bulgaria. All administrative penalties resulted from SKAT's violation of RTA's abovementioned art. 17, para. 2. Yet, most of the administrative penalties have been appealed and subsequently rescinded by the courts. The few fines imposed on the company that owns the controversial channel seem to have had no bearing on its choice of broadcast content. SKAT incessantly airs hate speech, which proves that the current mechanism for media regulation in Bulgaria is highly inefficient.

It is worth mentioning that throughout 2009 the talk-show of the vocal far-right leader Boyan Rasate on the television channel BBT, built upon an anti-Roma and homophobic doctrine, aired undisturbed for a relatively long period of time. The hate speech propagated through the Ataka television channel and newspaper are given similarly free reign. In response to the recent widely condemned attacks on the mosque in downtown Sofia, which were discussed in section 5.3, the online version of Ataka newspaper published an article describing the incident as resulting from the 'flagrant provocations and hooliganism of the Muslim cavemen'.¹⁴⁴

The abovementioned attack on the mosque in Sofia brings to the fore not only the hate speech, but the hate crime problematic. The Bulgarian *Criminal Code* is deficient in recognizing and punishing hate crimes, i.e. crimes perpetrated with discriminatory motives. The drawback of this legislation is that it does not recognise bias and hate as an aggravating factor. Thus the perpetrator of the racially-motivated murder of the Nigerian footballer Muaiua Kolauole in 2007, was eventually sentenced on 13 December 2009 by the Supreme Court to only five years of imprisonment. Another analogous case – that of medical student

¹⁴¹ Excerpts of BHC's open letter (in English) are available at < <http://www.bghelsinki.org/index.php?module=news&lg=en&id=4103> > (25 May 2011).

¹⁴² Letter, Tsetska Tsacheva, speaker of the National Assembly, Sofia, 20 January 2011. The parliament and the speaker herself, however, have spoken of the behaviour of MPs outside of parliament on numerous occasions, including the recent attack by Ataka activists of the Sofia mosque (see section 5.3).

¹⁴³ Sofia District Prosecutor's order refusing to initiate proceedings, No. 408, 13 May 2011.

¹⁴⁴ 'Mosques in Bulgaria Turned into Comfortable Shelter for Fundamentalists', *Ataka*, 23 May 2011, < http://www.vestnikataka.bg/show_news.php?id=210724&cat=7 > (26 May 2011).

Michael Stoyanov, beaten to death in 2009 because, according to his attackers he ‘looked gay’ – is still to be finalised. Even in this instance, hate will not be considered as an aggravating factor as there is no basis for this in the law.

The absence of a vital legal provision is further complemented by a misunderstanding or unfamiliarity on the part of Bulgarian law enforcement authorities with the notion of ‘hate crime’. In June 2010, a group of self-proclaimed right-wing extremist youths assailed several people en route to a demonstration against the poor conditions in which immigrants live at the only institution for temporary accommodation of foreigners near Sofia. The Minister of Interior described the incident as ‘clashed between extreme groups’, branding the victims as radical leftists.¹⁴⁵ ‘When institutions are not aware that these [hate crimes] constitute a problem, they do not monitor them. We know racially-motivated violence is perpetrated by skinheads, but the police have no relevant statistics’, concluded Yonko Grozev, a prominent human rights lawyer and chair of the legal programme of the Centre for Liberal Strategies.

7. Freedom of peaceful assembly and of association

Peaceful assemblies and associations of ethnic, religious, or other minorities in Bulgaria have been subject to longstanding suppression by the executive and the judicial authorities. In the past free assemblies of ethnic Macedonians had been routinely suppressed. Later celebratory or commemorative congregations, organised by ethnic Macedonian groups, were allowed but were arbitrarily controlled through the presence of unnecessary security forces, so that any open demonstration of Macedonian self-identification is stemmed. Furthermore, Bulgarian courts unremittently refuse to register and thus provide legitimacy to certain ethnic and religious organisations. The ECtHR in Strasbourg found violations of the right to freedom of assembly and of association in a total of five cases brought by ethnic Macedonians.¹⁴⁶

Where peaceful assemblies of Macedonians are allowed, their happening remains subject to unwarranted restrictions. As the mayor of Blagoevgrad permitted several associations of ethnic Macedonians to hold a commemorative event on 12 September 2010 to mark the day of mass killings of Macedonians in Bulgaria from 1924,¹⁴⁷ the security forces, which were present in big numbers forbade the use of flags and banners carrying Macedonian insignia. One participant was even fined for participating in the event an hour before its mandated beginning. Furthermore, during the commemorative event, an officer from the State Agency for National Security (SANS) verbally abused two participants and threatened to arrest them and ‘beat them up’.¹⁴⁸

Similar incidents accompanied public gatherings of ethnic Macedonians in previous years. In April 2009, representatives of the unregistered United Macedonian Organisation (UMO) Ilinden notified the mayor of Blagoevgrad of their intention to celebrate the anniversary of the murder of the revolutionary Gotse Delchev. On the day of the planned event, several activists from the organisation were arrested and taken to the police station where the wreath and the

¹⁴⁵ ‘The Invisible Victims of Hate’, *Mediapool*, 3 July 2010, < <http://www.mediapool.bg/show/?storyid=167305> > (26 May 2011).

¹⁴⁶ ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 29221/95 and 29225/95, 2 October 2001; *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, 44079/98, 20 October 2005; *United Macedonian Organisation Ilinden – PIRIN and others v. Bulgaria*, 59489/00, 20 October 2005; *Ivanov and others v. Bulgaria*, 46336/99, 24 November 2005; *United Macedonian Organization Ilinden and others v. Bulgaria*, 59491/00, 19 January 2006. Violations between 2004 and 2008 are subject of another case pending before the ECtHR in its final phase (41561/07, 20972/08, 37586/04, 48284/07, 34960/04).

¹⁴⁷ Also known as Macedonian Genocide Day among the ethnic Macedonians in Bulgaria.

¹⁴⁸ A more detailed account of the event can be found in the BHC annual report for 2010, available at < <http://humanrightsbulgaria.wordpress.com/%D1%81%D0%B4%D1%80%D1%83%D0%B6%D0%B0%D0%B2%D0%B0%D0%BD%D0%B5/> > (13 May 2011).

ribbon they were carrying were confiscated.¹⁴⁹ Analogically, on 31 August, UMO Ilinden representatives officially communicated their plans to mark the Macedonian Genocide Day, but the mayor of Blagoevgrad never responded to their notification. As the planned event was about to begin, however, several members of the organisation were stopped by a plainclothes policeman who informed them that their gathering was illegal and would provoke unrest. Upon deciding to return home, the ethnic Macedonian activists were arrested, taken to the police station, and had a wreath and three posters confiscated.¹⁵⁰

The numerous cases of such violations of the right to peaceful assembly, together with relevant ECtHR decisions, did prompt a more considerate approach on part of the public authority in 2011, but only to an extent. In the end of April this year, another UMO Ilinden-organised event, remained unmarred by direct police intervention. According to one of the main organisers, however, many plainclothes police officers were present, while some were even videotaping the event for ‘investigative’ analysis.¹⁵¹

Bulgarian courts, too, discriminate against ethnic Macedonian organisations in the process of the latter’s registration. This practice is in flagrant contradiction to the provision of the Covenant regarding freedom of association. In February 2010, the Blagoevgrad regional court yet again refused to register the Association of the Persecuted Macedonians¹⁵² as the operation of the organisation will allegedly ‘damage the integrity of the Bulgarian nation’, while its purposes ‘ignore the Bulgarian character of certain geographic regions’ and thus, their attainment will ‘undoubtedly have a negative impact on the integrity of the Bulgarian nation’.¹⁵³ The ensuing appeal before the Sofia Appeal Court (SAC) was rejected with the argument that its demands for political ‘privileges’ for the ethnic Macedonian minority are unconstitutional and furthermore – unreasonable as ‘there is no cohesive Macedonian ethnicity, while some of the purposes, outlined in the organisational statutes, suggest such an ethnicity exists and constitutes a minority’.¹⁵⁴ It is with this very statement that in 2009 SAC rejected the appeal against the decision of the Blagoevgrad Regional Court to deny registration of the Nikola Vaptsarov Macedonian Cultural and Educational Society. Another ethnic Macedonian organisation – the UMO Ilinden-PIRIN political party – received a final refusal of its application for registration by the SCC in 2009. The party had already won an ECtHR case in respect of the same matter, and has filed another complaint.

Members of ethnic minority communities face prosecution when they try to form political parties along ethnic or religious lines. In 2009 two brothers, Rosen Yordanov and Atanas Yordanov, were convicted to one year suspended prison sentence and a fine for organizing a political party along religious lines, Muslim Democratic Union (MDU).¹⁵⁵ The Constitution prohibits such parties. This ban however is enforced only against persons who try to organize political parties of ethnic minorities. Several “Christian” political parties have been registered and operate freely.

¹⁴⁹ Interview, Yordan Kostadinov, chair of UMO Ilinden, 11 May 2011.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² The stated mission of the organisation was to preserve the Macedonian heritage and archive the life stories of the persecuted ethnic Macedonians in Bulgaria, as well as to provide legal aid to the victims of such persecution.

¹⁵³ Decision No. 29, 19 February 2011.

¹⁵⁴ Decision No. 64, 14 July 2011.

¹⁵⁵ The case is reviewed in BHC’s annual report for 2010, available at < <http://humanrightsbulgaria.wordpress.com/%D1%81%D0%B4%D1%80%D1%83%D0%B6%D0%B0%D0%B2%D0%B0%D0%BD%D0%B5/>> (13 May 2011).

Appendix A: Videos of recent attacks on places of worship of Jehovah's witnesses and Muslim by extremist nationalistic groups

In the CD attached with the hard copy of the submission, you can find video footage from two of the recent attacks by far-right groups on places of worship:

- [Attacks on Jehovah's Witnesses in Burgas on 21 April 2011](#)
- [Nationalist party Ataka causes bloodshed at Sofia mosque on 20 May 2011](#)