



BULGARIAN  
HELSINKI  
COMMITTEE

**SUBMISSION TO THE UN COMMITTEE AGAINST  
TORTURE FOR ITS CONSIDERATION OF THE 4<sup>TH</sup> AND 5<sup>TH</sup>  
PERIODIC REPORTS OF BULGARIA AT THE 47<sup>TH</sup> SESSION  
OF THE COMMITTEE**

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## List of abbreviations

ARA – Asylum and Refugees Act  
BHC – Bulgarian Helsinki Committee  
BJU – Bulgarian Judges Union  
CBS – correctional boarding schools  
CC – crisis centres  
CPT – European Committee for the Prevention of Torture  
ECtHR – European Court of Human Rights  
GDES – General Directorate for Enforcement of Sentences  
IDF – investigation detention facilities  
JDA – Juvenile Delinquency Act  
MoI – Ministry of Interior  
NLAB – National Legal Assistance Bureau  
OSI – Open Society Institute  
PADVA – Protection against Domestic Violence Act  
SAPC – State Agency for Protection of Children  
SAR – State Agency for Refugees  
SCtC – Supreme Court of Cassation  
SCC – Sofia City Court  
SDIA – Sofia Directorate for Interior Affairs  
SEBS – social-educational boarding schools  
SHTAF – special home for the temporary accommodation of foreigners  
SJC – Supreme Judiciary Council  
SMRDA – State and Municipal Responsibilities for Damages Act

## Introduction

The present submission to the UN Committee against Torture is a work of the Bulgarian Helsinki Committee (BHC), an independent non-governmental organisation, advocating for the protection of human rights – political, civil, economic, social and cultural. 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 Bulgaria and abroad in a number of spheres. Monitoring torture, cruel, inhuman and degrading treatment and punishment has occupied the major part of BHC's research. BHC monitors started visiting prisons in Bulgaria on a systematic basis since 1994. They were allowed to make unannounced visits and a free access to convicted prisoners, including a possibility to conduct private interviews with detainees, but not to the remand prisoners, despite requests. On several occasions BHC was given access to places of police detention, although the organization has not had a possibility to speak with detained persons in private. At present BHC continues to be denied the possibility to speak with remand prisoners and with detainees in police lockups in private. BHC visits on a regular basis other places of detention – psychiatric institutions, places for deprivation of liberty of foreigners for the purposes of deportation, places for deprivation of liberty of children, social care homes for children and adults with mental disabilities. In all these places BHC researchers have a possibility to conduct unannounced visits, to check documents and to speak with persons deprived of their liberty in private.

BHC receives complaints from persons who alleged violations of their human rights, including their rights to be protected from torture, cruel, inhuman and degrading treatment or punishment on a daily basis. A good part of these complaints come from persons deprived of their liberty and from relatives, friends and legal representatives of such persons. BHC legal defense program has engaged in legal defense of victims of such abuses before domestic and international bodies. The organization's staff has taken part in the work of other institutions and NGOs in Bulgaria dealing with human rights monitoring of closed institutions.

In the present submission BHC sums up its observations on the implementation of the *Convention against Torture* in Bulgaria. It is focused around the list of issues to be considered in connection with the consideration of the fourth and fifth periodic reports of Bulgaria, which the Committee identified in its Forty-sixth session (9 May- 3 June 2011). More information on BHC's human rights monitoring, including all its publications, can be found on the BHC website: [www.bghelsinki.org](http://www.bghelsinki.org).

## Definition of torture

With its recommendations from June 2004, the Committee recommended that Bulgaria makes amendments to its *Criminal Code* in order to effectively criminalise torture.<sup>1</sup> To this date, the 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 Article 1 of the CAT. Instead, Bulgarian authorities in their submission claim that Article 143, Article 287 and Article 131, para. 1 of the *Criminal Code*, which refer to coercion in general, coercive extraction of information or confession from criminal defendants or witnesses and causing bodily injuries by a public official, furnish sufficient legal provisions to

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<sup>1</sup> UN Committee against Torture, 'Bulgaria: Conclusions and Recommendations', CAT, 2004, <<http://www.unhcr.org/refworld/country,,CONCOBSERVATIONS,BGR,,41173f244,0.html>>

comply with the definition in Article 1 of the Convention.<sup>2</sup> Neither article alone or in combination, however, comprehensively addresses the crime of torture in accordance with the elements defined in Article 1 of the CAT. They do not feature or describe a number of 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. Article 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, Article 131, para.1, Article 143 and Article 287 existed in almost the same forms in 2004 during the review before the Committee, 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.

## Legal assistance and safeguards against torture

Everyone's right to legal assistance upon arrest is guaranteed by the Constitution of Bulgaria. Article 21(4) of the *Legal Assistance Act* provides that any person may receive legal assistance while in police custody irrespective of whether criminal proceedings are initiated against them or not. Yet, over the past years, during police detention and pre-trial proceedings, the notions of immediacy and time have proven elastic in practice in the Bulgarian system. The increasing number of complaints concerning the right to immediate legal assistance prompted the issuance of an instruction on the type of actions that pre-trial proceedings organs can undertake regarding legal assistance by the Chief Prosecutor.<sup>3</sup> For the first time this instruction quantifies the notion of immediacy – 'no longer than two hours after detention'.<sup>4</sup> It also introduces the requirement for lawyers to be 'guaranteed immediate access to the detainee within 30 minutes of the lawyer's arrival at the detainee's location'.<sup>5</sup> In case the detainee opts for a state-appointed lawyer, the request needs to be recorded in a special logbook by the officer.<sup>6</sup>

Despite these obligations, two months after the issuing of the instruction, the chair of the Supreme Council of Attorneys (SCA), Ms Daniela Dokovska, stated that Ministry of Interior officers are still reluctant to provide access to legal assistance during the initial restrictive measure of 24-hour police custody. Dokovska urged the authorities to 'popularise the instruction, so that Ministry of Interior (MoI) organs can learn how to fulfil certain normative requirements'.<sup>7</sup> Furthermore, in accordance with Article 14(1)(2) of Instruction No. I3-1711<sup>8</sup> from 15 September 2009, immediately upon police detention, every person should be informed about their right to legal assistance and the possibility for having state-appointed lawyer. The revision of Article 21 of the *Legal Assistance Act* from 1 May 2006 added a new paragraph (4), which introduces the right to legal 'representation during police detention under Article 63(1) of the *Ministry of Interior Act*'. Thereby, the provision of legal assistance

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<sup>2</sup> Written replies by the Government of Bulgaria to the list of issues (CAT/C/BGR/Q/4-5) to be taken up in connection with the consideration of the fourth and fifth periodic reports of Bulgaria (CAT/C/BGR/4-5), 7 September 2011, /C/BGR/Q/4-5/Add.1, § 1.

<sup>3</sup> Chief Prosecutor, *Instruction on the Type of Actions that Pre-trial Proceedings Organs Can Undertake Regarding Legal Assistance*, 11 April 2011.

<sup>4</sup> Ibid, Article 7.

<sup>5</sup> Ibid, Article 8.

<sup>6</sup> Ibid, Article 5.

<sup>7</sup> 'Ministry of Interior does not allow lawyers to be present during police detention', *Sega*, 25 June 2011, <<http://www.segabg.com/online/new/articlenew.asp?sid=2011062500040000401>> (30 August 2011).

<sup>8</sup> This specific instruction pertains to the furnishing of detention centres within Ministry of Interior structures.

during the 24-hour police detention by Ministry of Interior organs allows the government to claim that it is guaranteed by law.

Yet, in practice, officers at many police departments simply hand a declaration detailing legal assistance options to the detainee for signature. An interim report by the Open Society Institute (OSI) in Sofia on civic monitoring of the police detention facilities between August and December 2010 claims that many of the detainees sign these declarations without receiving any oral clarifications regarding specific sections from police officers. Among the least clarified aspects is the right to free legal assistance and the conditions under which it can be provided.<sup>9</sup> In general, OSI notes substantial deterioration in the accessibility of legal assistance services.

The abovementioned instruction on the furnishing and regulation of detention centres within MoI structures requires police officers to duly note down the exact time of the legal assistance request and the time at which the lawyer arrived at the police department. In Plovdiv and Pazardzhik, however, civil monitors have recorded that in case lawyers refuse to appear or cannot be reached, no entries in the respective logbook are made.<sup>10</sup> In fact, state-appointed lawyers who are on duty often fail to appear during police detention.

The OSI report also details a few cases in which access to legal assistance was directly hindered by a police officer. In October, a detainee at the Sofia Directorate for Interior Affairs (SDIA) was advised by police officers not to contact their lawyer since it was ‘pointless’, while another detainee was forced to pay for their state-appointed lawyer’s services. A third detainee who wanted to hire a private lawyer was denied access since the police officers had not yet signed their detention order. Another similar account mentions the inability on the part of the detainee to contact their private lawyer due to a limit imposed on calls to mobile phone numbers.<sup>11</sup>

Another OSI report that assesses the implementation of the *Legal Assistance Act* between 2007 and 2011 finds that in general, access to legal assistance during police detention is limited. According to the report findings, this practice is perpetuated by police officers who “recommend” their former investigator colleagues, who have recently passed bar examinations, and consequently share the “return”. Since detailed information on a specific lawyer-on-duty’s qualifications and experience is not readily available, detainees often choose their lawyer arbitrarily or based on “advice” from police officers or investigators.<sup>12</sup> The whole process of appointing lawyers to detainees who cannot afford private legal assistance remains insufficiently transparent.

It is difficult to ascertain exactly how often those in custody for 24 hours exercise their right to legal assistance. In September 2011 BHC requested information from the National Legal Assistance Bureau (NLAB) on the number of cases, in which it had granted legal aid to persons who had been detained in the police stations. In response the chairperson of NLAB informed that for 2010 NLAB granted legal aid in 24 cases during police detention and in the first half of 2011 it granted legal aid in only four cases.<sup>13</sup> NLAB also informed that in most cases legal assistance during police detention is combined with legal assistance in the criminal proceedings, which had been formally initiated subsequently and that the bureau does not have information on the number of cases in which legal aid had been provided solely in the

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<sup>9</sup> Open Society Institute Sofia. (2011), ‘Interim National Report on the “Civil Monitoring of Police” Project for the Period August-December 2010’ (in Bulgarian), Sofia, OSI, <[http://www.osf.bg/cyeds/downloads/midterm\\_national\\_report\\_NEW.pdf](http://www.osf.bg/cyeds/downloads/midterm_national_report_NEW.pdf)> (7 September 2011).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Open Society Institute. (2011), ‘Assessment of the Implementation of the *Legal Assistance Act* 2007 – 2011’ (in Bulgarian), Sofia, OSI <[http://www.osf.bg/cyeds/downloads/ZPP\\_evaluation\\_report.pdf](http://www.osf.bg/cyeds/downloads/ZPP_evaluation_report.pdf)> (7 September 2011).

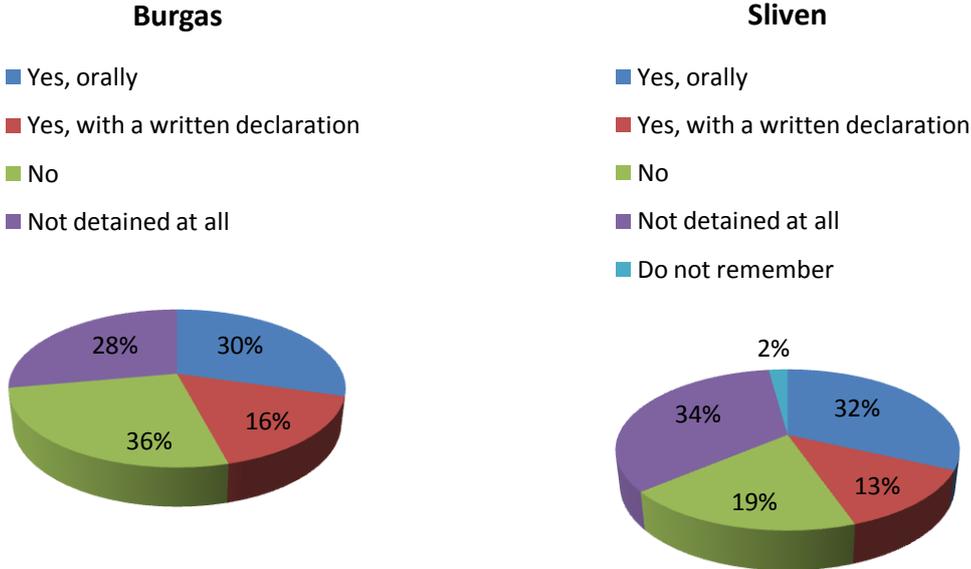
<sup>13</sup> Response by the chairperson of the NLAB to BHC, 15 September 2011.

context of police detention. The OSI report notes that detainees rarely seek legal assistance at this very early stage of their detention for a number of reasons. Firstly, police officers fail to explain thoroughly the process of obtaining legal assistance in case the detainee cannot afford private lawyer. Secondly, some detainees expect to be released and do not want to prolong their detention by waiting for the lawyer’s arrival. At the same time, OSI researchers report cases of private lawyers not being admitted to the respective police departments.<sup>14</sup>

BHC’s own research on closed institution shows that this type of legal assistance does not work effectively during police detention. The cases of successfully provided legal assistance during the first 24 hours of detention were few and mainly occurred when police officers took the time to explain to detainees their rights and helped them complete the application/declaration of their need for legal assistance. According to National Legal Assistance Bureau, the low levels of legal assistance provision largely stem from the failure on part of police officers to inform detainees about the existence of legal assistance options. In some cases, the reluctance of police officers to explain to detainees the possibility of legal assistance provision follows the individual’s inability to secure the financial resources to pay for a contracted lawyer, but still wishes to obtain protection. The reluctance to use this type of legal assistance is due to a heavily restrictive regime, which the law imposes on individuals entitled to such protection – those who can prove lower social status or their placement in specialised institutions for providing social services. Other reasons include the brief stay in the police station and the eventual release of the detainee or initiation against him/her of formal criminal proceedings and imposition of some other restrictive measure.

Loopholes in the provision of legal assistance upon police detention were uncovered in the findings of a survey, which was conducted by BHC in August 2011. BHC interviewed inmates in the prisons of Burgas and Sliven whose criminal proceedings had been initiated over the past two years. A total of 63 male inmates were interviewed in Burgas, while in Sliven the prisoners (all female) interviewed were 47. The graphs below represent some of the findings.

When asked whether they were informed of their right to legal assistance immediately upon detention, prisoners responded as follows:



In Burgas, three persons deprived of liberty claimed to have been forced to sign a number of documents without being able to understand their content (due to illiteracy or time

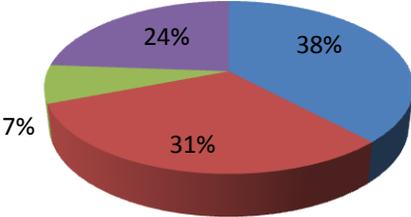
<sup>14</sup> Ibid.

limitations). One respondent said that he had not been allowed to read the documents he was signing, while another had to sign blank declaration forms.

When asked how they got in touch with their lawyers, interviewees who had access to legal assistance responded as follows:

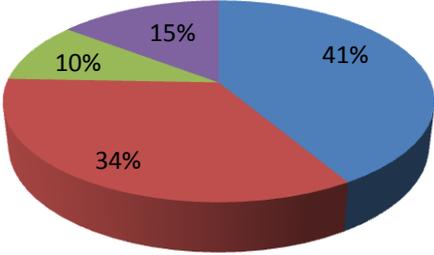
**Burgas**

- I contacted him/her myself
- The police officer contacted him/her
- I was denied this opportunity
- Do not know/remember

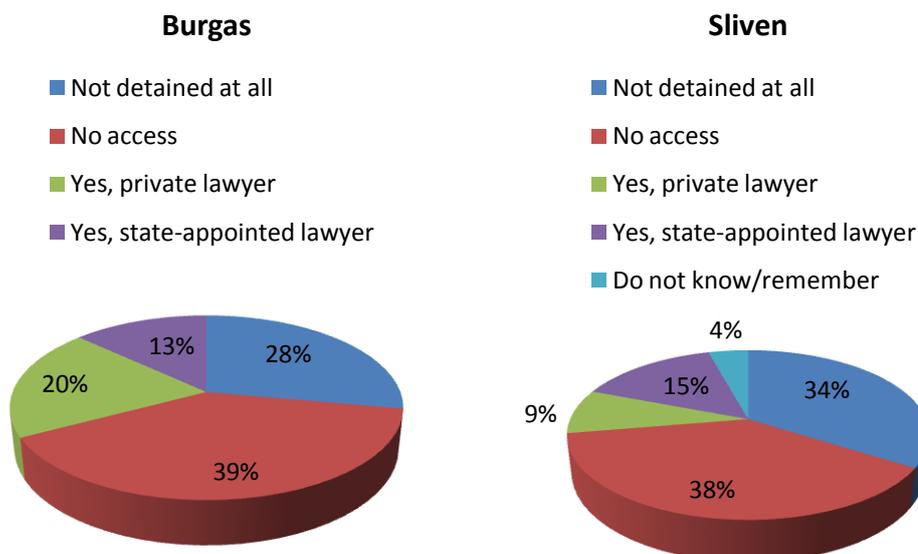


**Sliven**

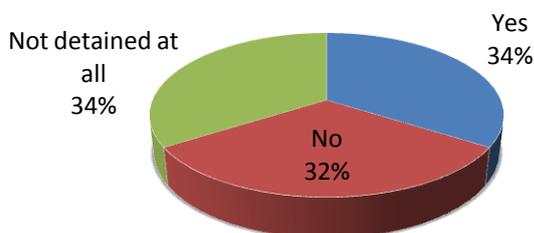
- I contacted him/her myself
- The police officer contacted him/her
- Relatives or friends contacted him/her
- Do not know/remember



When asked whether they had access to legal assistance at the time of police custody, interviewees responded as follows:



In Sliven, when asked whether they were interrogated in the absence of a lawyer in police custody, interviewees responded as follows:



## Police brutality

Excessive use of force and firearms by law enforcement officers is a serious stain on Bulgaria's human rights record. In 2010 alone, ECtHR (the Court) ruled against Bulgaria on eight cases of excessive use of force and firearms by law enforcement officers.<sup>15</sup> 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.<sup>16</sup> In

<sup>15</sup> ECtHR. (2011), 'Annual Report 2010 (provisional version)', Strasbourg, Council of Europe, p.130.

<sup>16</sup> For a comprehensive list of the cases, please see Margarita Ilieva. (2010), 'Police Brutality in Bulgaria as Seen by the European Court of Human Rights – Unlawfulness and Impunity' (in Bulgarian), Bulgarian Helsinki Committee, available at: <[http://policebrutality.bghelsinki.org/?page\\_id=2](http://policebrutality.bghelsinki.org/?page_id=2)> (25 September 2011).

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 its inadequate investigation.<sup>17</sup> 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.<sup>18</sup>

Death was caused in nine of the cases – 10 people were killed altogether.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup>

Since 2002 BHC conducts surveys among newly arrived prisoners in four prisons of Bulgaria to inquire about conditions of pre-trial detention, police brutality and access to justice. The survey is not representative for the prison system as a whole but gives a fair impression of the trends over the past several years. Among the questions asked are some related to the use of force by police during police detention and subsequently in the police station. The graph below presents the trend in the use of force in the two settings as it transpires from the responses of the prisoners from those four prisons in the period 2005-2009.

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<sup>17</sup> ECtHR, *Assenov and Others v. Bulgaria*, 24760/94, 28 October 1998.

<sup>18</sup> ECtHR, *Stefan Iliev v. Bulgaria*, 53121/99, 10 May 2007. The perpetrators in this case were indubitably police officers.

<sup>19</sup> 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.

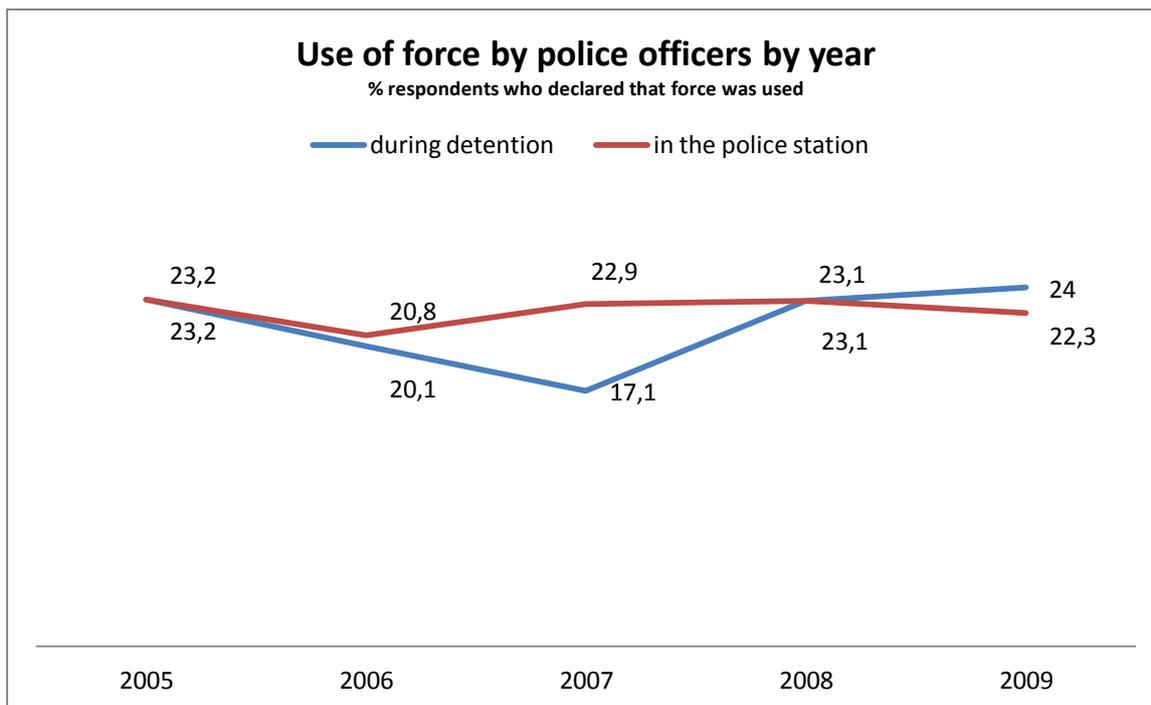
<sup>20</sup> ECtHR, *Bekirski v. Bulgaria*; *Shishkovi v. Bulgaria*, 17322/04, 25 March 2010; *Angelov v. Bulgaria*, 44076/98, 22 April 2004; *Sashov and Others v. Bulgaria*, 14383/03, 7 January 2010; *Georgi Dimitrov v. Bulgaria*, 31365/02, 15 January 2009; *Vladimir Georgiev v. Bulgaria*, 61275/00, 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*.

<sup>21</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> ECtHR, *Sashov and Others v. Bulgaria* and *Ognyanova and Choban v. Bulgaria*.

<sup>24</sup> ECtHR, *Nikolova and Velichkova v. Bulgaria*.



The above data clearly indicates that in effect nothing has changed in the use of force by law enforcement officers since the last review by the Committee in June 2004. After 2009, with entering into force of the new *Enforcement of Sentences and Detention under Remand Act*, all prisons of Bulgaria changed substantially the composition of their inmates and the survey could not therefore represent a fair picture of the trends after that year. As seen from the graph, the trends in the use of force are stable. The shares of the respondents who report being beaten up or otherwise physically abused in the four prisons is quite high and do not differ substantially for prisoners who had been abused upon detention compared to those who had been abused inside the police station.

The pertinent national legislation gives *carte blanche* to excessive use of firearms. According to Article 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.<sup>25</sup> 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. 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. Article 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.

Physical abuse and excessive use of firearms continued to be practiced with impunity by law enforcement officers. The case of the 28-year old Marian Ivanov (also referred to as Marian Dimitrov), who was shot dead 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,

<sup>25</sup> Republic of Bulgaria, *Ministry of Interior Act*, 1 May 2006, <[http://www.mvr.bg/NR/rdonlyres/5F939B72-40AD-45AB-A78A-D09207DB695C/0/ZMVR\\_EN.pdf](http://www.mvr.bg/NR/rdonlyres/5F939B72-40AD-45AB-A78A-D09207DB695C/0/ZMVR_EN.pdf)>(29 April 2011).

investigate such cases. The investigation of the case cited the flawed *Ministry of Interior Act* and concluded that the act performed by the police officers did not constitute a criminal offence. With this conclusion the pre-trial proceedings were terminated. In another widely publicised case, on 9 June 2011 the Supreme Court of Cassation acquitted five police officers who on 10 November 2005 killed the businessman Anguel Dimitrov – Chorata on a street in the city of Blagoevgrad, in the course of a police operation “Respect”, which the then government organized in order to arrest criminal suspects. According to the categorical medical evidence Dimitrov had numerous bruises on his body and his head. Police officers had been found guilty for intentional murder by several courts before, including at their initial trial. The Supreme Court however, in a 2 to 1 decision, found that they acted in full compliance with the law and that Dimitrov died from the complication of his health conditions, which were exacerbated due to the “excessive stress” in the course of the arrest. In 2009, Tsvetan Tsvetanov, immediately after he became Minister of Interior, declared that police officers who killed Dimitrov were innocent.

## Independence of the judiciary

Guaranteeing the rights to redress and reparation (Article 14), as well as prompt investigation and remedy (Articles 12 and 13 of the Convention), is a function of a healthy judiciary system that can operate in an independent manner which sustains the rule of law in the country. Unfortunately, over the past two years independence of the judiciary in Bulgaria was seriously challenged. On the one hand, high-ranking government officials initiated systematic attacks against the judiciary with the aim of interfering with its decisions. On the other – judicial independence was dealt a heavy blow by some recent appointments of persons with a doubtful competence but closed to the Minister of Interior and the ruling political party.

The Minister of Interior, Mr Tsvetan Tsvetanov, untiringly directs public criticism towards various judges regarding their forthcoming decisions in key cases. In a series of statements he kept accusing individual judges and the judicial system as a whole for alleged cooperation with the mafia; that it serves organized crime, and that the judiciary is not cleansing itself of corruption, unlike the MoI. Although general in content, many of his statements were made on specific occasions, for example, after a court’s refusal to detain a person arrested by the police. In a statement in October, 2010 he said that “the Bulgarian judiciary is releasing detainees because of illness or other severe conditions, while in the other EU countries criminals are being handed quick and just sentences”.<sup>26</sup> In reality, both in the past and in 2011 the European Court of Human Rights has found Bulgaria guilty in numerous cases of unjustified detention imposed by the courts. In February 2010 Tsvetanov threatened the judges with documents from police investigations he allegedly had in his possession, which would, in his words “make teeth fall”.<sup>27</sup> But so far he failed to produce such documents.

These attacks on the judiciary sparked sharp confrontation between the Bulgarian Judges Union (BJU) and the government. In February, July and October 2010 BJU issued public statements criticizing “the attempt on the part of the executive power to prevail over the judiciary by means of political advertising aimed at influencing public opinion without the use

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<sup>26</sup> “Tsvetanov: The court serves organized crime” (in Bulgarian), *Frog News*, 14 September 2010 < [http://frognews.bg/news\\_27814/TSv\\_Tsvetanov\\_Sadat\\_sluji\\_na\\_organiziranata\\_prestapnost/](http://frognews.bg/news_27814/TSv_Tsvetanov_Sadat_sluji_na_organiziranata_prestapnost/)> (13 September 2011).

<sup>27</sup> “Tsvetanov: If I tell the truth, teeth will fall” (in Bulgarian), *Vseki den*, 26 February 2010, < <http://www.vsekiden.com/65875/>> (13 September 2011).

of professional arguments”.<sup>28</sup> It also expressed concerns about the “difficult and hostile conditions” in which they work and over the incessant attacks by representatives of the executive branch against the judiciary. On 16 May 2011 a delegation of the European Association of Judges released a report in which it stressed that unrealistic expectations for heavy sentences and accusations of the Bulgarian Minister of Interior for corruption and incompetence of the judges “exert enormous amounts of pressure over judges”.<sup>29</sup> Other organizations too issued public statements in defence of the independence of Bulgaria’s judiciary. In July 2011 the Supreme Bar Council criticized Tsvetanov for “systematically hurling abuse at the independent Bulgarian judiciary in public, ruining people’s trust in the estate and planting feelings of hatred towards the judiciary, and also pressurises courts to adjudicate in an a way, which is acceptable for the police”.<sup>30</sup>

The government was successful in establishing control over the Supreme Judicial Council (SJC) and through it made a number of appointments to top positions in the judiciary of persons faithful to it. In November 2010 the government reached an agreement with the SJC on the election of the former chair of the Sofia City Court, Georgi Kolev, as Chair of the Supreme Administrative Court. Kolev, the only candidate for the post, is a former prosecutor and penal judge and has no experience in either administrative or civil law. He was Chair of the Sofia City Court for a little over a year. He has no academic publications. Observers have noted that his election is due only to his close ties with the government.

The peak of arbitrary meddling of the government into the management of the judiciary was the appointment by the SJC on 30 May 2011 of Vladimira Yaneva as Chairperson of the largest court in Bulgaria, Sofia City Court. Ms Yaneva has a limited judicial experience of only four years and qualifications, which are incomparable with those of the other three contenders for the post. On the other hand, she is known to be a close family friend of the Minister of Interior, which is not insignificant in the circumstances, especially in view of the fact that the Chairperson of Sofia City Court grants permissions for the use of secret surveillance means in the context of criminal investigations. It also became clear that she had a serious conflict of interest in the past in dealing with one of the high profile corruption cases, which was distributed to her but she failed to withdraw from it. Moreover, she initially terminated criminal proceedings and when her ruling was overturned on appeal, she persisted with not proceeding with the case. The appointment of judge Yaneva as Chairperson of the Sofia City Court brought turmoil and anger in large segments of Bulgaria’s judicial and human rights community. Immediately after the appointment, two of the most respectable members of the SJC resigned in protest. At a press conference they stated that the decisions of the SJC were pre-determined and that the Council disregards professional criteria in its appointments. All major human rights organizations demanded resignation of the members of the SJC and serious reforms in its composition in order to ensure its integrity and protect independence of the judiciary. On 14 June 2011 BJA demanded the resignation of the SJC members and prompt reforms of its structure and membership in order to “overcome the unprecedented crisis of public confidence”. SJC members refused to resign and some even accused those who demanded their resignation of “serving the interest of the mafia and organized criminal groups”.

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<sup>28</sup> These letters are available in Bulgarian at the web site of the BJU: <<http://www.judgesbg.org/?m=10&id=2>> (14 September 2011).

<sup>29</sup> “International Experts: Bulgarian Interior Minister Erodes Justice System Credibility”, *Novinite*, 16 May 2011, <[http://www.novinite.com/view\\_news.php?id=128291](http://www.novinite.com/view_news.php?id=128291)>, (14 September 2011).

<sup>30</sup> Supreme Bar Council, ‘Statement’, 8 July 2011, <<http://www.vas.bg/Pages/News/Default.aspx?evntid=26094>> (12 September 2011).

## Conditions in prisons, investigative detention facilities and police stations

Another just as an enduring trend are the frequent violations of the right not to be subjected to inhuman and degrading treatment of persons deprived of liberty under the criminal procedure. Penitentiary institutions in Bulgaria, including investigative detention facilities and prisons, 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, do not meet international standards for treatment of those deprived of liberty. 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’,<sup>31</sup> 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*,<sup>32</sup> 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 as of 18 May 2011,<sup>33</sup> 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. This rather dilapidated material base is now meeting the pressure of massive overpopulation and thus raising concerns about the acceptability of the living conditions provided vis-à-vis the requirements of Article 16 of the Convention.

The living space in the cells of the Burgas, Varna, Sofia and Pleven prisons remains insufficient, and requires the use of double and even triple bunks – a clear indicator of overcrowding. The explanatory notes of the 2008 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.<sup>34</sup> Since 2008 the situation deteriorated due to the overall increase of the number of prisoners in Bulgaria. During the most recent visit to the Varna prison, carried out by the BHC penitentiary institutions research team at the end of September 2010, the average living space per person was 1 sq. m.

On 18 and 19 August 2011, a team of BHC researchers visited the prison in the city of Burgas and found that over the past year the number of persons deprived of liberty had increased dramatically. At the time of the visit, 866 inmates were accommodated in the main building of the prison, whose official capacity was for 371 inmates. The research team visited two prisoners’ groups (number seven and eight), a total of 240 persons, who shared the living space of a corridor on the fourth floor of the main building of the facility. Their cells were not equally divided in terms of area as some of the cells were former dining halls that had to be reallocated due to the increasing number of prisoners. This means that in certain sections of the prison inmates could only have their meals while standing up in the rather narrow corridor. Usually, between 15 and 44 persons shared a cell. In cell No 419, BHC witnessed

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<sup>31</sup> CPT. (2010), ‘Report to the Bulgarian Government on the visit to Bulgaria from 15 to 19 December 2008’, Strasbourg, Council of Europe, p. 9.

<sup>32</sup> Article 43 of the act provides explicit regulation for the living space and conditions for every inmate.

<sup>33</sup> Directorate General Enforcement of Sentences. (2011), ‘Prisons’, available at <<http://www.gdin.bg/Pages/Prisons/Default.aspx>> (18 May 2011).

<sup>34</sup> Ministry of Justice. (2008), ‘Strategy for the Development of the Correctional Facilities 2009-2015’ (in Bulgarian), Sofia, p. 4, <[http://www.dkiad.mvr.bg/NR/rdonlyres/1358D922-9BE2-43C1-A4CA-C721BFB10B6E/0/Stra\\_za\\_mestata\\_za\\_li6avane\\_ot\\_svboda.pdf](http://www.dkiad.mvr.bg/NR/rdonlyres/1358D922-9BE2-43C1-A4CA-C721BFB10B6E/0/Stra_za_mestata_za_li6avane_ot_svboda.pdf)> (18 May 2011).

the accommodation of 44 persons in a 55 sq. m. cell that had only 40 beds available. Thus, four of the inmates who lived in that cell were forced to sleep on the floor space between beds. During the day, their mattresses were rolled up and stored under other inmates' beds. The only open space in the cells consisted of the aisles between the beds.

None of the cells at the Burgas or Varna prisons have separate sanitary facilities. In the abovementioned section of the Burgas prison, 240 inmates share a total of three toilets and only one shower in a deplorably unsanitary state. As cell doors are locked at night, instead of toilet facilities, all persons deprived of liberty have to use buckets that are in alarming proximity to their beds and are also clearly visible by all other inmates. Not only most cells do not have drinking water, but their windows are too small to provide fresh air (especially during the warmer seasons) and sunlight sufficient for all the inmates. In Varna, cell doors are perforated due to rodent infestation. The tremendous overcrowding and the resultant drastic deterioration of the living conditions, lack of sufficient living space and separate sanitary facilities within the cells, as well as the personnel shortages and escalating tensions among inmates, more and more often lead to inter-prisoner violence.

In respect of health care, services in the prisons are not integrated with 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*. Over the past year, BHC has registered a sharp increase in the number of complaints sent by inmates to the BHC legal defense programme, regarding healthcare provision.<sup>35</sup> The underlying reasons are staff and equipment deficiencies, as well as unavailability of specialised assistance. No independent control is exerted to ensure adequate provision of services that affect directly inmates' health status.

The living conditions and medical service provision in the investigative 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. Only 15 of the 43 IDFs provide for possibilities for outdoor walk. In 10 IDFs there are separate rooms for indoor walk. In the rest of the institutions detainees are locked all day and night in their cells, except when they use the toilet. Buckets in the cells were forbidden already in 1999. Guards were obliged to escort detainees to the toilet facilities but this proved problematic in many institutions, especially in the big ones. The limited number of toilet facilities makes this impossible in practice. This is why sometimes detainees are compelled to urinate in plastic bottles in their cells. Detainees in all IDFs cannot benefit from any activities. In many facilities there is no medical personnel on staff. Under such conditions detainees spend on average several months and in some cases up to two years.

Part of the questionnaire that the BHC closed institutions research team used in its August 2011 fieldwork in the Sliven and Burgas prisons featured questions regarding the conditions under which prisoners were initially held in investigative detention facilities. Apart from the use of unlawful physical violence and even torture by police officers,<sup>36</sup> some interviewees complained about the degrading conditions of their detention. One 36-year-old respondent from the Burgas prison, who was detained in January 2010, claimed that in the Sliven investigative detention centre he was allowed to use the toilet facilities only three times a day (morning, noon and evening) and was told by the police officers that at other times, he had to urinate in a bottle.

The construction of new investigative detention facilities is highly necessary in order to provide more acceptable and humane conditions for detention. Upon completion of the former

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<sup>35</sup> BHC, 'Annual Report for 2010', (Bulgarian Helsinki Committee, Sofia, 2011), p. 25.

<sup>36</sup> For more details on this matter please refer to the section on police brutality above.

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. Yet, none of these plans have been implemented. Thus, the absolutely necessary step towards the realisation of the right to adequate treatment of detainees and inmates remains to be made.

Conditions of detention in many police stations too are inhuman and degrading. In a number of police stations police detention cells are unhygienic and do not ensure appropriate accommodation of detainees for overnight stay. What is more, in the course of the interview BHC researchers conducted in the Burgas prison on 18 and 19 August 2011, some interviewees claimed that they were not held in cells segregated with solid walls and outside of the view of the visitors of the police station during the initial 24-hour detention. A quarter of the interviewed Burgas inmates said that they spent their first 24 hours in detention in what is commonly referred to as a "cage", which is an area in the facility separated by bars. BHC's research team recorded two instances of handcuffing of detainees to heating radiators or piping. One respondent claimed to have been immobilised with handcuffs to a chair for six hours. Another disturbing account revealed that a detainee was handcuffed and instructed to lay on the floor for several hours, his head covered with a jacket.

## Inter-prisoner violence

Prison administrators in Bulgaria are faced with another extremely daunting task – that of monitoring and preventing inter-prisoner violence. The main challenges stem from the fact that inmates cohabit in overcrowded cells and corridors and any attempts at matching prisoners' psycho-social profiles in order to achieve living compatibility are thwarted by the sheer number of inmates and the lack of capacity discussed in the previous section. Usually between 6 and 40 inmates share a cell in most prisons. Apart from those who are deprived of liberty under a special security regime, all other inmates can move freely in their respective facility sectors throughout the day. Thus, between 80 and 240 persons deprived of liberty daily share the space of a single corridor. In most cases the supervision of such a corridor is assigned to only one officer who is incapable of adequately neutralising inter-prisoner arguments, brawls, and physical fights. CCTV installations in corridors do not provide sufficient warranty against the occurrence of violence. What is more, in order to circumvent formal sanctions, perpetrators of violence are known to confine their aggression to the space of cells and toilet facilities, which are not under camera surveillance.

On 23 September 2010, a team of BHC researchers visited the prison in Varna and was told by the prison director that some of the supervisor openings at the facility have attracted virtually no applications. Due to the unfilled positions, currently one officer is responsible for a whole floor, which contains three sectors (three different corridors). Altogether, this makes for 300 prisoners to be supervised by only one person. The latter is thus incapable of effectively monitoring and registering violations, such as drug dealing and other prohibited activities, including violence. In the Burgas prison the situation is even more extreme – two prisoner groups (No 7 and 8), or a total of 240 inmates, share a corridor on the fourth floor of the main prison building.

Over the past few years, BHC has registered an increase in the number of complaints by persons deprived of liberty regarding inter-prisoner violence and sexual harassment. In one such complaint, the parents of 27-year-old Mr G.S., who resides in the Varna prison, detail numerous instances of rape and beatings. The inmate's access to common areas such as the corridor was hindered by other prisoners. Once Mr G.S. managed to reach the corridor, he attempted suicide. He was found unconscious in the bathroom facilities and subsequently had

to have his wrist stitched up at the prison medical centre. Once recovered, Mr G.S. was transferred to a different corridor, designated for sick or elderly inmates. In September 2008, the chair of the Protection against Discrimination Commission confirmed that his institution receives a large number of complaints regarding sexual harassment, especially of homosexual inmates, who are often victims of degrading treatment and physical violence.<sup>37</sup>

In August 2011, a 19-year-old inmate in the Pleven prison hanged himself in a toilet. His relatives claimed that he was systematically beaten up to the point that the young man decided to end his life. Yet, investigators claimed that heartbreak was the reason behind his suicide. His father stated that prior to the tragic event, his son had requested to be transferred to a different prison on a number of occasions as he was physically and psychologically harassed and blackmailed by fellow inmates.<sup>38</sup>

Following the growing number of inter-prisoner violence reports, BHC requested statistical data on the number of reported cases of inter-prisoner violence, as well as the sanctions imposed, from the General Directorate for Enforcement of Sentences. The aggregate data is presented in the table below:<sup>39</sup>

Year	Cases recorded	Punished prisoners	Ensuing deaths	Pre-trial proceedings
2007	908	985	0	4
2008	728	818	0	4
2009	767	901	2	8
2010	758	952	0	6
first half of 2011	567	630	0	6
Total	3728	4286	2	28

The above data indicate a trend towards the increase of inter-prisoner violence since 2008 and especially in 2011. Different prison facilities display a substantial degree of variation in the number of such reports. For example, in the Sofia prison, between the beginning of 2007 and the middle of 2011, there were a total of 217 such cases reported and 517 prisoners who were subsequently punished. For the same period, the Lovech prison recorded 411 cases of inter-prisoner violence, but punished only 240 of the offenders. This discrepancy indicates the absence of standardised practice for sanctioning of those who engage in inter-prisoner violence. At the same time, the female-only prison facility in Sliven has recorded the highest number of violent acts, mostly due to the fact that employees there are very diligent in recording (and as a result – punishing) even otherwise negligible cases of verbal aggression. By contrast, data from all other prisons, which are male-only facilities, most likely does not record all instances of petty inter-prisoner violence as a result of scarce staffing or non-reporting.

Sexual violence is often among the rarely reported cases. Victims fail to complain as they do not want to be ‘humiliated’ before other inmates or prison administration. Since cells are locked at night, it is difficult to have a realistic idea of the sort of sexual activity that takes place within the cells behind closed doors. Previously acquired data solely on instances of sexual violence has shown that while some prisons do report such cases, most lump them in the broader category of inter-prisoner fights.

<sup>37</sup> ‘Sexual harassment behind bars’ (in Bulgarian), *Dnes.bg*, 7 September 2008, <<http://www.dnes.bg/technology/2008/09/07/seks-tormoz-zad-reshetkite.56920>> (29 August 2011).

<sup>38</sup> ‘19-year-old prisoner hanged himself in Pleven’ (in Bulgarian), *Dnes.dir.bg*, 2 August 2011 <<http://dnes.dir.bg/news/samoubiystvo-zatvornik-plevenski-zatvor-9196833>> (29 August 2011).

<sup>39</sup> General Directorate for Enforcement of Sentences, Letter to the BHC from 12 August 2011, Sofia.

## Redress and right to fair and adequate compensation

The persistently dire living conditions that most persons deprived of liberty in Bulgaria are forced to endure have given the latter sufficient grounds to file claims and demand compensation for damages as victims of inhuman or degrading treatment. In order to examine all pertinent cases, BHC addressed General Directorate for Enforcement of Sentences (GDES) with a request for information on the number of such cases. We were told that the directorate has only functioned as a legal entity since 1 June 2009 and between then and 30 August 2011 there have been only 40 such initiated cases. The official response also mentioned that the directorate has no information on completed proceedings in Bulgarian courts and court rulings against it based on the State and Municipal Responsibilities for Damages Act (SMRDA).

Before June 2009, the defendant in such cases was the Ministry of Justice. Our inquiry indicated that most of the court proceedings grounded on SMRDA violations were initiated not necessarily by prisoners who serve their sentences in the worst material conditions. Successful cases, in which prisoner obtained monetary compensations, are in fact very rare. Court judgments do not offer relief other than monetary compensation and the latter often goes to pay the damages, which the prisoner has to pay to the victims of his/her crime.

BHC's regular inspections in prisons throughout Bulgaria established that only in a few prisons (Stara Zagora, Bobovdol, Varna, Lovech) those deprived of liberty file claims against the bad living conditions. From the Bobovdol prison alone there were around 20 cases initiated in the Administrative Court of Kyustendil following claims submitted by inmates, which were against GDES for caused psychological trauma. Among the problems outlined by inmates are scarce heating, poor quality of water, insufficient time spent outdoors and inadequate access to bathing facilities. The damages sought vary between 2,000 BGN and 20,000 BGN, but no final rulings have yet been issued.

## Treatment of persons with mental disabilities in institutions

Bulgaria is severely lagging in adopting adequate measures to address the situation and reform the system of care for persons with mental disabilities in institutions.<sup>40</sup> Government's inactivity in ensuring that competent staff and humane living conditions are present in all relevant facilities, together with the lack of social support for the purposes of deinstitutionalisation, incessantly leads to violations of the right of institutionalized persons not to be subjected to inhuman and degrading treatment, as well as other human rights.

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.<sup>41</sup> At the end of 2008, 1,502 children and young adults lived in 26 care institutions for children with intellectual disabilities, 767 young persons lived in nine social-education professional centres (boarding schools for persons with disabilities at the age 14 to

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<sup>40</sup> Bulgaria 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'. The report was submitted by the European Commission to member states in 2009 and delineates the desirable trajectory of the common EU disability strategy and especially with regards to deinstitutionalisation. It 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 July 2011).

<sup>41</sup> National Centre for Health Information. (2008) 'Statistics: Patients in Psychiatric Institutions, Offices, and Outpatient Clinics', <[http://www.nchi.government.bg/statistika/B\\_5.pdf](http://www.nchi.government.bg/statistika/B_5.pdf)> (1 June 2011).

35) and 4,401 people lived in 58 institutions for adults with intellectual disabilities, mental health problems and dementia.<sup>42</sup>

The possibilities for receiving services in the community are eclipsed for many persons with mental disabilities by the omnipresent institutionalisation practice. 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. 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. The strategy features no reliable data on the number of institutionalised persons, as well as their needs. In 2010 the government started a project at deinstitutionalization of children with mental disabilities in all institutions. At the present writing the results of this project are yet to be seen.

Over the past decade care homes for children with mental disabilities in Bulgaria maintained practices 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.<sup>43</sup> 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.

The inspections also recorded instances of violence, tying up, and mistreatment with harmful medication, which comes to prove that highly damaging neuroleptic drugs are still 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’.<sup>44</sup> Although the facility in Mogilino was closed down in 2009 following an international civil society and media outrage, 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 neuroleptic drugs. Although most of the cases were avertible, close to none were investigated. Upon completing its inspection of

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<sup>42</sup> National Statistics Institute. (2008), ‘Data on Social Services, Provided in Specialised’, <<http://www.nsi.bg/otrasal.php?otr=22&a1=537&a2=542#cont>> (1 June 2011).

<sup>43</sup> 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).

<sup>44</sup> Bulgarian Helsinki Committee. (2010), ‘Inspection Report from Sveta Petka’, BHC, Sofia, p. 6 <[http://forsakenchildren.bghelsinki.org/wp-content/uploads/2010/09/Doklad-DDMUI-Mogilino-10.09.2010\\_bd.pdf](http://forsakenchildren.bghelsinki.org/wp-content/uploads/2010/09/Doklad-DDMUI-Mogilino-10.09.2010_bd.pdf)> (16 May 2011).

all institutions for children with mental disabilities, the Prosecutor's Office initiated formal proceedings. Based on the documents provided by prosecutors to BHC, as of 30 September 2011 180 investigations were instituted (146 into death cases, and 34 into living individuals' cases). Fifty-seven of those were terminated (at various levels, some not by final decision) (44 concerning death cases and 13 concerning the living). 123 investigations are now pending (102 concerning death cases and 21 concerning the living). 3 investigations are suspended (living individuals' cases). Six prosecutors refused to open investigations (at various levels, one by final decision). Six prosecutors decided to have further inspections rather than open an investigation. BHC has filed 68 appeals against prosecutorial decrees. BHC has **appealed against 93% of all prosecutorial decisions**, a fact implying their overall inadequacy. The general trend is of closure of all proceedings without real effective investigation, and of no case reaching court. Thus far, not a single indictment has been brought to court – a blatant disregard for the victims' right to life and the right not to be subjected to inhuman and degrading treatment. The bulk of the proceedings are against unknown perpetrators.<sup>45</sup>

Even though institutionalised children in Bulgaria are obviously subject to inhuman and degrading treatment by the state and as a direct result of the quality of care provided to them, the very material conditions of most homes also are in violation of the Convention. Despite most facilities' recent renovations, the repairs are often botched and reveal an inefficient use of available financial resources. 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.<sup>46</sup>

The situation of adults with mental disabilities in institutions is also a serious problem. They are all placed in such institutions, which in effect are places for deprivation of liberty, without any judicial safeguards upon placement and in the course of their subsequent detention, which may be and is in most cases for life. The quality of the services provided in those institutions is deplorable across the board – staff negligence and dire living conditions in many facilities underlie the shocking incidence of inhuman and degrading treatment of residents. The abysmal state of this sector of social care provision produces an environment conducive to institutional syndrome aggravation, physical injuries, and death.

In 2009, during a fieldwork trip, BHC experts observed forced immobilisation and isolation of persons in a number of institutions. In the care home for elderly persons with mental health problems 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 practices, the archives of the Rovino establishment for 2008 justify it as necessary, due to the aggressive behaviour of the patients.<sup>47</sup> 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 except for one were being administered excessive doses of haloperidol – an antipsychotic drug, which, when administered in such doses, leads to substantial difficulties in the performance of basic daily activities.<sup>48</sup>

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

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<sup>45</sup> Public statement, Galina Toneva, deputy chief prosecutor of Bulgaria, Sofia, 1 June 2011.

<sup>46</sup> Interview, Aneta Genova, Coordinator of the field research for all BHC inspections of institutions for children with disabilities in 2010, Sofia, 17 May 2011.

<sup>47</sup> Bulgarian Helsinki Committee. (2010), 'Annual Report 2009', BHC, Sofia, p. 29.

<sup>48</sup> Ibid., p. 30.

institutions for adults with mental disabilities.<sup>49</sup> At the institution in the village of Goren Chiflik, adjacent to the newly-opened 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. In August of the same year the research team registered slight improvements, but 25 users were still living in what they described as 'the horror corner'.<sup>50</sup>

In September 2011 a BHC research team visited several institutions for adults with mental disabilities in south-eastern Bulgaria. In the social care homes of Malko Sharkovo, Zavernovo and Fakia BHC team saw improved material conditions but the same lack of competent staff, adequate care and no psycho-social rehabilitation programs whatsoever. The situation in Fakia was particularly disturbing. The attending psychiatrist travels from more than 50 km and visits the institution once or twice a year. Residents were not engaged in any meaningful activities and a number of them were self-aggressive. Several had traces of serious injuries on their bodies.

Such inhumane treatment in social care institutions 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 'institutional syndrome', which strips them of independence, responsibility, and dignity to the point of depersonalisation.

The existing centralised administrative procedure for institutionalisation of persons with mental disabilities further triggers cruel, inhuman or degrading treatment as it facilitates arbitrary placement. 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. Residents are thus deprived of contacts with relatives and friends.

There is an obvious lack of institutions and facilities in Bulgaria that are able to ensure care for persons with mental disabilities 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.<sup>51</sup> 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 disabilities (total capacity of 28), and one such centre for adults with mental health problems were opened.<sup>52</sup> Thus, only 760 adults can benefit from residential care in the community, while an estimated 4,000 persons altogether remain institutionalised.

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<sup>49</sup> 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](http://www.bghelsinki.org/upload/resources/Needs_assessment_2009.doc)> (17 August 2011).

<sup>50</sup> Ibid. p. 120.

<sup>51</sup> Social Assistance Agency. (2011), 'Protected Homes', <[http://www.asp.government.bg/ASP\\_Client/ClientServlet?cmd=add\\_content&lng=1&sectid=24&s1=23&selid=23](http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&s1=23&selid=23)> (1 June 2011).

<sup>52</sup> Social Assistance Agency. (2011), 'Annual Report 2010', <[http://www.asp.government.bg/ASP\\_Files/APP/Otchet-ASP-obobshten-2010.htm](http://www.asp.government.bg/ASP_Files/APP/Otchet-ASP-obobshten-2010.htm)> (1 June 2011).

## Aliens, migrants, asylum seekers

Undocumented aliens and illegally resided migrants in Bulgaria face a risk of return to their countries of origin where they may be subjected to torture, cruel, inhuman and degrading treatment or punishment. The ineffective protection against such possibilities has been clearly demonstrated in the recent judgment of the ECtHR in the case of *Auad v. Bulgaria*, which found a violation of Article 3 of the ECHR due to the indifference of the administrative and judicial authorities do the fate of a migrant, considered a threat to national security for his possible ill treatment in his country of origin.<sup>53</sup> But in Bulgaria, the pressing issues regarding practices of torture, inhuman or degrading treatment of aliens, undocumented migrants, and asylum seekers are not solely confined to instances of violations of Article 3 of the Convention (non-refoulement). There exists a horde of other problems related to the general lack of information, translation, and legal assistance for persons detained under aliens legislation; the prolonged duration of detention and its impact on detainees' physical and mental health; the biased and cumbersome appeal process for expulsion and extradition decisions, and the poor living conditions in detention centres, especially with regard to asylum seekers whose deportation is suspended by law.<sup>54</sup> What is more, the right to immediate accommodation in a registration and admission centre, as well as the provision of social assistance and health insurance upon registration of the asylum application, is systematically violated.

Over the past year (2010), none of the asylum seekers in Bulgaria had access to legal assistance during the proceedings on granting status since the State Agency for Refugees (SAR), without any reasonable explanation, suspended its legal assistance programme supported by the European Refugee Fund. As a result, all proceedings under the *Asylum and Refugees Act* (ARA) were held with absolute lack of legal protection and representation. According to the chair of the Refugee and migrant programme at BHC,<sup>55</sup> all foreigners seeking protection in 2010 could apply for asylum at the border only with the assistance of lawyers and interpreters provided by BHC. Asylum seekers regularly reported prejudiced procedural interviews, incorrect minutes, refusals to collect evidence, and inaccurate descriptions of evidence they presented.<sup>56</sup> Furthermore, the 2006 *Legal Assistance Act* itself does not explicitly require the state to provide legal assistance to detainees unless it is for criminal proceedings. The funding shortages and corruption that plagues the entire legal assistance system<sup>57</sup> also have grave repercussions on illegal migrants and asylum seekers' access to a lawyer.

A recent civil society report on the detention of vulnerable asylum seekers and irregular migrants in the European Union describes the whole process of detention under aliens legislation as 'very badly informed'.<sup>58</sup> An enduring problem is the delay with which some detainees are informed about the reasons behind their arrest and are thus left unacquainted with any details, specific facts and rights guaranteed by law (e.g. the right to appeal). According to field research that was part of the abovementioned report, a third of the interviewees (detainees) felt like they needed to be provided with more information on the administrative and court procedures that succeed their arrest.<sup>59</sup>

<sup>53</sup> ECtHR, *Auad v. Bulgaria*, Appl. No. 46390/10, Judgment of 11 October 2011.

<sup>54</sup> Republic of Bulgaria, *Asylum and Refugees Act*, 1 December 2002, Article 67(1).

<sup>55</sup> Interview, Iliana Savova, chair of the Refugee and migrant programme at BHC, 21 June 2011.

<sup>56</sup> Bulgarian Helsinki Committee, (2011). 'Human Rights in Bulgaria in 2010', Sofia, BHC, p. 34

<sup>57</sup> Open Society Bulgaria, (2011). 'Assessment of the Implementation of the Legal Assistance Act 2007 – 2011', Sofia, OSI, p. 26.

<sup>58</sup> Jesuit Refugee Service – European Regional Office, (2010). 'Becoming Vulnerable in Detention', Brussels, DEVAS, p. 146.

<sup>59</sup> *Ibid.*

A possible further deterrent to their proper and thorough understanding of ongoing events is the reported lack of adequate interpretation in a language spoken by the detainee. Without adequate resources allocated for translation services, Border Police are unable to duly ensure the proper registration of asylum seekers and their applications, as required by Article 58(4) of ARA. Over the past year, BHC's migrant and refugee programme recorded a number of disturbing cases, in which Border Police and investigative bodies required that foreigners themselves pay for interpretation and translation services, sometimes even for the purposes of criminal proceedings and indictment under Article 279 of the *Criminal Code*. Other detainees have reported the illegal practice whereby they are notified of any details regarding their status by immigration officers in Bulgarian *only*.

On 15 May 2009, Article 46 was introduced to the *Aliens Act* to guarantee the right to appeal of detention orders within a period of seven days. Yet, in a number of cases, the communication, information, and interpretation problems outlined above have resulted in missed appeal deadlines and thus have denied the detainees the right to have the judiciary exercise independent control over detention decisions.<sup>60</sup> In fact, the presence of independent judicial control in cases pertaining to illegal migrants and asylum seekers is highly debatable. The second instance court that reviews detention appeals, as well as expulsion orders (the Supreme Administrative Court), is known to display certain nuances of politicisation and to adjudicate based on hearsay evidence and informal reports from Ministry of Interior officials or like-minded affiliates.<sup>61</sup> Thus, in refoulement cases, the legitimacy of the security concerns expressed or communicated by the State Agency for National Security (SANS) is often questionable, but at the same time difficult to challenge.<sup>62</sup> It merits mention that a lot of attempts to enter Bulgaria illegally, possibly even on the part of persons who could be in danger of being subjected to torture in their country of origin, are thwarted by officers from Border Police through the use of physical violence.

Those who do manage to register their asylum application at the border often cannot make use of their rights to accommodation, social assistance and health insurance, as most are transferred to the special home for the temporary accommodation of foreigners (SHTAF) in Sofia's Busmantsi neighbourhood. Residence in Busmantsi is essentially a prison-like experience in what is effectively a closed institution for illegal immigrants subject to eventual deportation and should by no means be considered equivalent to a SAR transit or registration and admission centre. This practice dates back to 2007 and has been justified through the use of Article 16(1)(3) of the 2008 *Ordinance on the Responsibility and Coordination between the State Agency for Refugees, Directorate General Border Police and the Migration Directorate of Ministry of Interior*. The ordinance contradicts Article 29(1)(2) and Article 20 of ARA, which is a higher-ranking legislative act, and further violates commonly accepted European standards on admission.<sup>63</sup> SAR continues to justify this unlawful practice with insufficient capacity of its registration and admission centres. As a result, asylum seekers held at SHTAF upon filing their asylum application at the border and having it registered, would spend between two and five weeks in detention until their release by SAR for identification, registration, and accommodation. The abovementioned ordinance exempts only unaccompanied minors, pregnant women and persons with mental and physical disabilities from detention in a SHTAF.

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<sup>60</sup> Ibid, p. 143.

<sup>61</sup> Interview, Iliana Savova, chair of the Refugee and migrant programme at BHC, 21 June 2011.

<sup>62</sup> See for example ECtHR, *Al-Nashif v. Bulgaria*, No. 50963/99, 20 June 2002 and the subsequent cases against Bulgaria before the Court dealing with the difficulties to challenge deportation orders.

<sup>63</sup> More specifically Article 18(1) of *Directive 2005/85/EC* on minimum standards for procedures in Member States for granting and withdrawing refugee status.

According to data collected by BHC for our annual human rights report,<sup>64</sup> a total of 1,008 asylum seekers were registered in Bulgaria in 2010. Two-hundred and ninety-six of them were registered at the border and 183 (61%) were detained at SHTAF Busmantsi. Only 113 (39%) of all asylum seekers were granted direct access to a procedure for accommodation at SAR registration and admission centres. A total of 580 asylum seekers were detained in 2010 and 65% were released within one month. Although in general the average period of detention of asylum seekers at SHTAF was reduced significantly in 2010 (to between three weeks and six months), asylum seekers still do not have direct and unhindered access to a refugee procedure.

More disturbingly, however, the conditions at the Busmantsi centre have been subject to longstanding criticism from human rights groups and advocates.<sup>65</sup> Instances of inhuman treatment abound: from physical ill-treatment<sup>66</sup>, through appalling living conditions<sup>67</sup>, to practically non-existent medical care.<sup>68</sup> Detainees live in constant fear for their very basic existence as their health is monitored only by medical staff that visits the facility on a rotation basis with nurses and doctors sometimes being seen as little as once a month, even when emergencies arise. A shockingly illustrative case was the death in 2009 of Syrian national Hasun Albaadzh, who had resided at Busmantsi since 2006 and had never received adequate medical care even though he had requested such on a number of occasions.<sup>69</sup> Galvanised by this ongoing regime of mistreatment, on 18 February 2010, 25 detainees at Busmantsi went on hunger strike to protest the inhuman and degrading treatment at the institution. According to the US Bureau of Democracy, Human Rights and Labour, it was the deportation of seven Nigerian citizens, who were informed of their impending deportation some 15 minutes before the scheduled return flight, that sparked the strike actions.<sup>70</sup>

Healthcare provision at the newly opened SHTAF in Lyubimets is markedly better than at Busmantsi, but conditions at the new detention centre are also substandard, especially vis-à-vis accommodation of asylum seekers. Although the opening in 2011 of Lyubimets near the Greece/Turkey border was aimed at fulfilling Schengen requirements, the UN High Commissioner for Refugees' Protection Officer described the facility as 'not designed and not appropriate for asylum seekers'.<sup>71</sup>

At the same time, the opening of the long-awaited SAR transit centre in the village of Pastrogor, in the vicinity of the Bulgarian-Turkish-Greek border, marked yet another year of postponement. As of 2010, due to architectural planning mismanagement, the opening of the facility will be delayed indefinitely. This lack of a SAR territorial unit at Bulgaria's most important border, which witnesses the heaviest migration flow, precludes the possibility for registering foreigners who lawfully declare their request for international protection at the

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<sup>64</sup> The English version is available at: <<http://old.bghelsinki.org/upload/resources/Report2010-English.pdf>> (1 September 2011).

<sup>65</sup> See, for example, Bulgaria's profile in the Global Detention Project database, available at: <<http://www.globaldetentionproject.org/countries/europe/bulgaria/introduction.html>> (4 September 2011).

<sup>66</sup> CPT. (2010), 'Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 15 to 19 December 2008', Council of Europe, Strasbourg, p. 18.

<sup>67</sup> Bureau of Democracy, Human Rights, and Labour. (2011), '2010 Country Reports on Human Rights Practices: Bulgaria', available at <<http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154417.htm>> (4 September 2011).

<sup>68</sup> 'Becoming Vulnerable in Detention', p. 148.

<sup>69</sup> 'Bulgarian NGOs Want Investigation of Death of Syrian Refugee', *Novinite*, 9 October 2009, <[http://www.novinite.com/view\\_news.php?id=108668](http://www.novinite.com/view_news.php?id=108668)> (1 September 2011).

<sup>70</sup> '2010 Country Reports on Human Rights Practices: Bulgaria'.

<sup>71</sup> UNCHR. (2011), 'Crossing a border irregularly is not a crime for a refugee', available at <<http://www.unhcr-centraleurope.org/en/news/2011/crossing-a-border-irregularly-is-not-a-crime-for-a-refugee.html>> (31 August 2011).

border before the Border Police. Moreover, Border Police Directorate General continues to perform its functions without allocating funds for interpretation and thereby perpetuates the vicious circle of inadequate and often inhuman treatment that all undocumented migrants receive at the Bulgarian border and subsequently – within the country's territory.

## Domestic violence

The disquieting incidence of acts of domestic violence in Bulgaria<sup>72</sup>, most of which remain unreported or inadequately addressed by the judicial system, constitutes not only a gross violation of the Convention, but also provides ample grounds for further normalisation of this inhuman and degrading practice. According to the chair of the national Alliance for Protection against Domestic Violence, Ms Genoveva Tisheva, cohesive aggregated data is difficult to put together since acts of domestic violence are not mentioned at all in the *Criminal Code*.<sup>73</sup>

Although in 2010, the *Regulation on the Enforcement of the Protection against Domestic Violence Act*, which succeeded the coming into force of the *Protection against Domestic Violence Act* (PADVA),<sup>74</sup> was adopted, efforts at establishment of efficient mechanisms for protection against cruel and degrading treatment in the form of domestic violence and marital rape remain limited. The abovementioned regulation elaborates solely on the application of measures for protection against domestic violence, the interaction between the state bodies and non-governmental organisations working in the field of protection against domestic violence, as well as the annual funding from the budget of the Ministry of Justice for NGO programs for prevention and protection against domestic violence and for assistance to victims.

As the application of PADVA is slowly progressing, a 2007 study by Human Rights Advocates, in conjunction with Bulgarian Gender Research Foundation, highlights the 'procedural and substantive issues' by which the pertinent legislation's implementation has been plagued.<sup>75</sup> According to a recent shadow report submission for the UN Human Rights Committee,<sup>76</sup> even in 2011, a number of legal framework problems persist: civil protection for victims in lieu of a functioning criminal justice proceedings for punishment of perpetrators; non-criminalised nature of acts of domestic violence; short time limits for privately prosecuted crimes, which constitute the standard format in the case of domestic violence.<sup>77</sup> In respect of the latter concern, the first ever CEDAW decision against Bulgaria from 25 July

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<sup>72</sup> According to a statement by Alliance for Protection against Domestic Violence, the reported victims of domestic violence throughout 2010 totalled 4,809 and data for the first half of 2011 show that acts of domestic violence are increasing ('1,300 Victims of Domestic Violence for 6 Months', *Novinar*, 28 June 2011, <[http://novinar.bg/news/1300-sa-zhertvite-na-nasilie-u-nas-samo-za-polovin-godina\\_MzYxNTs2Mw==.html](http://novinar.bg/news/1300-sa-zhertvite-na-nasilie-u-nas-samo-za-polovin-godina_MzYxNTs2Mw==.html)> (1 September 2011).

<sup>73</sup> Ibid.

<sup>74</sup> The latter can be accessed in English at <[www.mlsp.government.bg/2Fequal%2Fequalen%2FProtection\\_Against\\_Domestic\\_Violence\\_Act\\_BG.doc&rt=j&q=protection%20against%20domestic%20violence%20act%20bulgaria&ei=YTZeTv3qM47Ksw](http://www.mlsp.government.bg/2Fequal%2Fequalen%2FProtection_Against_Domestic_Violence_Act_BG.doc&rt=j&q=protection%20against%20domestic%20violence%20act%20bulgaria&ei=YTZeTv3qM47Ksw)> (31 August 2011).

<sup>75</sup> Advocates for Human Rights and Bulgarian Gender Research Foundation (2008), *Implementation of the Bulgarian Law for Protection against Domestic Violence*, Minneapolis, Advocates for Human Rights, p. 5 <[http://www.theadvocatesforhumanrights.org/uploads/final\\_report\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/final_report_2.pdf)> (1 September 2011).

<sup>76</sup> Bulgarian Gender Research Foundation (2008), *Questions and Comments on the Replies from the Government of Bulgaria to the List of Issues*, p. 2-3. <[http://www2.ohchr.org/english/bodies/hrc/docs/ngo/BGRF\\_Bulgaria\\_HRC102.doc](http://www2.ohchr.org/english/bodies/hrc/docs/ngo/BGRF_Bulgaria_HRC102.doc)> (1 September 2011).

<sup>77</sup> There is a six month limit for their initiation (from the perpetration of the act onwards) and the length of prosecution is also limited, so that in effect many cases end up being terminated due to lack of final judgment in certain time frame.

2011<sup>78</sup> urges Bulgaria that the issuance of permanent protection orders should no longer adhere to the one-month limit (within which acts of domestic violence should have occurred)<sup>79</sup>. The UN committee communication<sup>79</sup> also criticised heavily domestic courts for their rather narrow interpretation of the concept of domestic violence.

Another aspect of domestic/sexual violence remains virtually unaddressed even in preventive government programmes. 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 action. Informal marriage arrangements among Roma teenagers are widely made and regarded as ‘family-organised partnerships’ along the lines of consensual marriage. 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 cases of mistreatment, including marital rape, or domestic violence.

## 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’.<sup>80</sup>

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.<sup>81</sup> A number of cases of physical abuse, perpetrated by the employees of each institution, were documented in the children’s personal files.<sup>82</sup> 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.<sup>83</sup> 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

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<sup>78</sup> CEDAW, *V. K. v. Bulgaria*, Communication No. 2012, Views of 25 July 2011, § 9.16.

<sup>79</sup> Republic of Bulgaria, Protection against Domestic Violence Act, art. 10 (1).

<sup>80</sup> 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 June 2011), p. 2-3.

<sup>81</sup> A more detailed exposé of the findings of the study can be found in the section on care for persons with mental disabilities above.

<sup>82</sup> All relevant statistics and reports are available (in English) at <<http://forsakenchildren.bghelsinki.org/en/>> (16 June 2011).

<sup>83</sup> Ministry of Education, Youth and Science, ‘Registry of All schools and Kindergartens’, MEYS, February 2011, <<http://www2.minedu.government.bg/adminmon/schools/>> (30 June 2011).

children'.<sup>84</sup> Despite the projected expansion of efforts to combat corporal punishment in various settings, media reports of such incidents abound.<sup>85</sup>

## Hatred and violence against vulnerable groups

Even with the 2003 adoption of the *Protection against Discrimination Act*<sup>86</sup>, minority ethnic and religious groups, as well as the LGBT community, are still subject to regular discrimination and harassment (both in the form of hate speech and hate crimes) from public officials and private groups. Bulgarian *Criminal Code* recognises racist and xenophobic motives of killing and causing bodily injury as grounds for enhanced criminal responsibility but it does not provide for such responsibility for other bias motivated crimes, such as arson, rape or robbery. And it does not provide for enhancement of punishments in cases of bias motivated crimes based on religion, gender, sexual orientation and other grounds. But even more problematic is the lack of willingness and expertise on the part of the prosecution to apply the existing legislation. As a result, far-right and nationalist movements continue to harass minority communities with impunity.

On 17 April 2011 the ultra-nationalist formation 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. The building and a number of Witnesses were brutally attacked with fists and stones. Five members of the religious community were seriously injured and had to be hospitalized.<sup>87</sup> Several months later six assailants were convicted and received symbolic punishments between a fine of 200 BGN (100 Euro) and six months probation.<sup>88</sup>

In another 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 blaring patriotic chants near the mosque, threw eggs and stones at the Muslims, and shouted insulting slogans. The attack led to injuries of several Muslims and police arrested several Ataka activists who were later released.<sup>89</sup> Criminal proceedings were opened but they did not result in any convictions as of mid-October 2011.

In a similarly disturbing incident, five activists who took part in the 18 June 2011 Gay Pride in Sofia were attacked by skinheads and severely beaten up after the event.<sup>90</sup> Police could not identify the assailants. 'This is not an isolated incident. During the past four years, gangs in central areas of Sofia have been beating up people who "look gay"'. However, this

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<sup>84</sup> 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](http://sacp.government.bg/media/cms_page_media/21/STRATEG_%20plan%20DAZD-2011-2013_1.doc)> (30 June 2011).

<sup>85</sup> See, for example, 'Mother Beat Her Child to Death', *Darik News*, 18 July 2008 <[http://dariknews.bg/view\\_article.php?article\\_id=273432](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 June 2011).

<sup>86</sup> An English version of the act is available at <<http://www.regione.taa.it/biblioteca/minoranze/bulgaria2.pdf>> (21 April 2011).

<sup>87</sup> 'Brawl between Bulgarian Nationalists, Jehovah's Witnesses Injures 5', *Novinite*, 18 April 2011, <[http://novinite.com/view\\_news.php?id=127400](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).

<sup>88</sup> Cf. "Bulgaria court fondled hooligans" (in Bulgarian), *Obektiv*, 28 September 2011, <http://www.bghelsinki.org/bg/publikacii/obektiv/daniela-kostadinova/2011-09/burgaskiyat-sd-pogali-huliganite/> (29 September 2011).

<sup>89</sup> 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\\_mjusjulmanit\\_e\\_v\\_sofiia/](http://www.capital.bg/multimedia/fotogalerii/2011/05/20/1093301_fotogaleriia_ataka_provokira_mjusjulmanit_e_v_sofiia/)> (20 May 2011).

<sup>90</sup> "Five persons attacked after the Sofia Pride 2011", 19 June 2011, <<http://www.pridesofia.org.html>>, (20 September 2011).

has not led to any measures by the authorities to ensure the protection of lesbians, gay men, bisexuals and transgender people in Bulgaria, and to prevent similar hate crimes’, said one of the attacked LGBT rights activists before Amnesty International.<sup>91</sup>

A spree of anti-Roma violence and instigation to hatred and discrimination ensued after the killing on 23 September 2011 in a traffic accident of a young Bulgarian from the village of Katunitsa, near Plovdiv, by a van-driver who was believed to be closed to the family of a Romani shadow businessman Kiril Rashkov (known as “Tsar Kiro”). The perpetrator was arrested and charged for the incident. The latter however provoked mass anti-Roma rallies in the village and in several other cities of Bulgaria. Rallies were spontaneously organized through Facebook and were frequented by non-partisan extremists, football fans and activists of two xenophobic political parties – Ataka and IMRO. Three houses of the Rashkov family were burned out on the night of the incident. Several of the family cars were destroyed. This happened in front of the eyes of the police, which did not act to prevent the violence. During the next several days anti-Roma marches were held throughout the country. Several Roma were attacked and injured, Roma houses and other properties were vandalized. Roma and Turks were insulted by angry crowds shouting “Gypsies into soap!”, “Turks under the knife!”, “Death to Gypsies!”, “Turks – out of Bulgaria!”. The leader of the extremist nationalistic party Ataka, Volen Siderov, organized several rallies and called for the restoration of the death penalty, immediate destruction of all Roma ghettos, allowing citizens to use deadly weapons for protection of their property and establishment of citizens’ militias by law.<sup>92</sup>

## Recommendations

With the aim to ensuring better protection against torture, cruel, inhuman or degrading treatment or punishment, BHC makes the following recommendations to Bulgarian authorities. They should:

1. Make amendments to the *Criminal Code* in order to criminalize torture with all its elements contained in Article 1 of the *Convention against Torture*;
2. Protect against and effectively investigate all cases of torture and ill treatment, including the excessive use of force and firearms by law enforcement officers;
3. Amend the *Ministry of Interior Act* so that it provides that law enforcement officers may use firearms against any person only where absolutely necessary;
4. Ensure through legislative and institutional reforms to guarantee that every person who is detained by the police has an effective access to a lawyer from the moment of detention;
5. Establish an effective and accessible system of redress and compensation of victims of torture, cruel, inhuman and degrading treatment;
6. Improve conditions of detention in prisons, investigative detention facilities and police stations through reducing the overcrowding, improving the hygiene, nutrition, lighting and ventilation, organizing purposeful activities for all detainees and providing for more possibilities for contacts with their families and friends;
7. Improve medical services in all places of detention and integrate them with the national health care service;

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<sup>91</sup> Amnesty International. (2011), ‘Bulgaria Must Investigate Attacks on LGBT Activists’, 19 June 2011, <<http://www.amnesty.ie/news/bulgaria-must-investigate-attacks-lgbt-activists>> (26 August 2011).

<sup>92</sup> “‘Ataka’: Restoration of death penalty and immediate demolition of ghettos” Mediapool, 29 September 2011, <[www.mediapool.com](http://www.mediapool.com)>, (3 October 2011).

8. Ensure adequate protection of prisoners and effective investigation and punishment of inter-prisoner violence;
9. Protect against inhuman and degrading treatment and establish judicial safeguards for placement and subsequent periodic judicial review of placement in all institutions for persons with mental disabilities;
10. Effectively investigate all deaths and other abuses by the staff in institutions for children and adults with mental disabilities;
11. Establish an effective national preventive mechanism for prevention of torture, cruel, inhuman or degrading treatment or punishment;
12. Allow access of non-governmental human rights organizations to all places of detention and freedom to conduct effective monitoring in them, including through interviews with detainees in private;
13. In cases of expulsion or extradition of aliens give priority to consideration of whether the person expelled or extradited runs the risk of being tortured or ill treated in his/her country of origin above any other considerations, including national security;
14. Monitor and prevent domestic violence against women and children through effective implementation of criminal law and other measures;
15. Effectively combat corporal punishment of children at home, in schools and in institutions for public care through awareness-raising and information campaigns, as well as through effective investigation and punishment of such practices.
16. Protect vulnerable ethnic, religious and sexual minorities against harassment and bias-motivated violence, including through effective implementation of criminal law against perpetrators.