



ALTERNATIVE REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN BULGARIA (short version)

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BULGARIAN HELSINKI COMMITTEE

CIVIL AND POLITICAL RIGHTS



B U L G A R I A N H E L S I N K I C O M M I T T E E

The **Bulgarian Helsinki Committee** was established on 14 July 1992 as an independent non-governmental organisation for the protection of human rights.

The **objectives** of the committee are to promote respect for the human rights of every individual, to stimulate legislative reform for bringing Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularise and make widely available human rights instruments.

The backbone of the committee's **activities** is systematic monitoring of the human rights situation in the country. These activities provide information on the state and dynamic of human rights in Bulgaria and supply the organisation's legal defense program with cases of human rights violations for litigation before domestic and international courts. The committee reports on human rights violations with a special emphasis on the rights of ethnic and religious minorities, refugees and asylum-seekers, rights of the child, rights of persons with disabilities, protection from torture and ill-treatment, freedom of expression and association, problems of the criminal justice system.

The BHC offers **free legal assistance** to the victims of human rights abuses. The committee also works in the sphere of human rights education, organizes conferences, workshops, public actions and other forms of advocacy activities aiming at bringing the concept of human rights to the attention of the general public.

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TABLE OF CONTENTS

INTRODUCTION	4
1. HATE CRIMES	4
2. EQUALITY BETWEEN MEN AND WOMEN	5
3. LGBTI RIGHTS	5
4. RIGHTS OF PERSONS WITH DISABILITIES	6
5. VIOLENCE AGAINST WOMEN, DOMESTIC VIOLENCE	9
6. PROHIBITION OF TORTURE AND CONDITIONS OF DETENTION	12
7. TRAFFICKING OF HUMAN BEINGS	14
8. TREATMENT OF IMMIGRANTS (ASYLUM PROCEDURE, PUSH-BACKS, ILL-TREATMENT)	15
9. FORCED EVICTIONS OF ROMA FROM THEIR ONLY HOMES	16
10. RIGHT TO LIBERTY AND SECURITY OF PERSON AND RIGHT TO PRIVACY – DEVELOPMENTS IN LEGAL CAPACITY LEGISLATION AND PRACTICE	17
11. FREEDOM OF ASSEMBLY AND OF ASSOCIATION	18
12. FREEDOM OF CONSCIENCE AND RELIGIOUS BELIEF AND RIGHTS OF RELIGIOUS MINORITIES	19
13. PROTECTION OF CHILDREN AND THE RIGHTS OF THE CHILD	20
14. INDEPENDENCE OF THE JUDICIARY AND FAIR TRIAL	22
RECOMMENDATIONS	23

INTRODUCTION

The Bulgarian Helsinki Committee submits its observations on legislative, judicial, administrative and practical developments related to the implementation of the International Covenant on Civil and Political Rights (the Covenant) for the period 2012-2018. The observations do not cover the entire period. They focus on the developments from the last several years. Thematically, they follow for the most part the *List of issues prior to the submission of the fourth periodic report* adopted by the Human Rights Committee (the Committee) at its 114th session (CCPR/C/BGR/QPR/4). In addition, they highlight developments that have not been included in the list of issues but fall within the Covenant's substantive scope.

As a whole in the period under review and particularly over the past several years there have been some serious problems and negative developments in the implementation of the standards of the Covenant in Bulgaria. This may be attributed to a variety of factors, including the growing influence on the government by some ultranationalist parties; lack of a much-needed reform of the judiciary; worsening of the media climate and negative human rights developments at the international level. There have been some positive developments as well, mostly due to the attempts by the Bulgarian authorities to comply with concerns and recommendations by UN and Council of Europe human rights bodies, as well as with the EU law.

In the period under review Bulgaria had several governments. For most of the time, they were dominated by the centre-right political party Citizens for European Development of Bulgaria (GERB), which entered into several coalitions to obtain the necessary parliamentary majority. As a whole, the public perception of human rights in general and of the most serious human rights problems of Bulgaria gradually deteriorated. The mainstream media, whose dependence on the government increased, contributed to suppressing the voice of the vulnerable groups and of the human rights NGOs.

1. HATE CRIMES

Criminalization of the incitement to discrimination, hostility and hatred as well as violence and causing property damage (including desecration of temples) on the grounds of race, ethnicity, nationality, and religion has been reformed in 2011.¹ The murder and bodily injury inflicted with racist or xenophobic motives by the perpetrator since then are to be punished with heavier penalties. However, other protected grounds, such as sex, sexual orientation, disability, age or other grounds were not included. The choice whether to apply the existing provisions in cases where bias-motivated crimes are concerned lies entirely within the **discretion of the prosecution and the investigation authorities** and the evidence gathered as there is no imperative legal provision which obliges them to take the bias motive into account.² The practice shows that the **conviction rates**

¹ Bulgaria, *Criminal Code*, Art. 162(1), Art. 116(1)(11), Art. 131(1)(12) Art. 161(1), Art. 162(2), available in Bulgarian at: <http://www.lex.bg/bg/laws/doc/1589654529>.

² *Criminal Procedure Code*, Art. 219(3)(3).

are very low³ while the political, media and societal climate is dominated by hate speech and hate crimes. During 2016 numerous racist protests and demonstrations took place targeting mainly refugees or Roma, in which hate speech often overflowed into direct calls to violence.⁴ LGBTI people are also targeted with hate assaults but the law does not allow for the prosecution of assailants for hate crimes as sexual orientation is not among the protected characteristics in the *Criminal Code*.

Over the past two years hate speech increased in public speaking through the media that often give the floor to racist, xenophobic and homophobic views and to anti-minority activists. Politicians used incitement to racist hatred, discrimination and violence even from the floor of the parliament with impunity. The Bulgarian authorities do not cope with the timely and effective investigation of hate crimes. A strong boost to Islamophobic hate speech was given in 2016 after the adoption of *Ban on Clothing that Partially or Completely Covers the Face Act*.

2. EQUALITY BETWEEN MEN AND WOMEN

The *Equality between Men and Women Act* was adopted in April 2016,⁵ but it is purely a framework regulation unable to achieve its stated goals. In November 2016 the Council of Ministers adopted the new *National Strategy for Promoting Gender Equality 2016–2020* which lacks a baseline assessment about the state of gender equality, its goals are formulated in general and abstract way and it fails to address vulnerable groups among women. No plan for its implementation was adopted in 2017.

The gender pay gap is increasing (14,2 %),⁶ women are the main caretakers of children and sick family members,⁷ and the percentage of women involved daily with cooking or other domestic duties in Bulgaria is 72.9 %. This results in lower remunerations (by 15.4%) and pensions (by 35%), as well as higher risk of poverty and social exclusion for women in Bulgaria compared to men.

3. LGBTI RIGHTS

In 2016 and 2017 LGBTI persons did not enjoy any significant progress on the inequality issues they face, the most pressing of which are: access of their communities to education about sexual and

³ Government, *Report about the Implementation of the Obligations under UN Convention on Elimination of All forms of Racial Discrimination*, Annex 3, available at:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fADR%2fBGR%2f22749&Lang=en.

⁴ In September, residents of the Ovcha Kupel district in Sofia organised a protest demanding the immediate closure of the refugee centre in the neighbourhood, and "immediate expulsion of illegal migrants". The event was organised by the VMRO, Ataka and the NFSB political parties. Protesters chanted "Aliens out!" and "I do not want you here!". Small groups of residents of the town of Harmanli repeatedly protested against the refugee reception centre in the city, organised mainly by VMRO and NFSB. In October, the extremely racist group "National Resistance" organised a protest march in Sofia against immigrants and shouted racist slogans in front of the police.

⁵ *Equality between Men and Women Act*. (promulg. SG., issue 33 from 26 April 2016).

⁶ National Statistical Institute (2016). *Gender Pay Gap* (dynamic order). Available online at:
<http://www.nsi.bg/bg/content/3976/%3F-азлиchie-v- заплащането-по-пол.>

⁷ National Social Security Institute (2016). Statistics on the indemnities paid in the first quarter of 2017. Accessible on the Internet at: http://www.nssi.bg/images/bg/about/statisticsandanalysis/statistics/obz/SPRAVKA_bolnichni_template_30_09_2017.pdf.

reproductive health, legal recognition of same-sex marriages, a lack of a simple and free administrative procedure for changing one's official gender following the “single window” service model, as well as a change in medical standards relating to conditions and anomalies in the development of sexual organs. The main challenges to progress were a lack of expert and public debate on the above-mentioned issues, a lack of recognition of these issues in terms of public policy, a lack of resources and strategic planning on the part of the civil organisations within these communities, a lack of a developed and prominent public presence, as well as the fact that an overwhelming part of LGBTI persons continued to conceal their identity from others. Bulgarian legislation continues to fail to acknowledge any form of same-sex unions and does not provide for non-marital form of the *de facto* unions. Same-sex couples who live in *de facto* cohabitation in permanent family unions do not enjoy any of the over 50 legal regulations concerning the rights, duties, and responsibilities or limitations for those who have entered into marriage. Some of these regulations concern visitation rights, parenting rights, joint property ownership, certain types of leaves of absence, bereavement allowance, state benefits, compensation for the death of a spouse, protection from domestic violence, tax benefits. Unlike unmarried different-sex couples, same-sex couples cannot enter into any form of legally recognized union, which puts them in a position of inequality.

Spreading or inciting discrimination, violence, or hate; resorting to violence; the destruction of property; or forming, leading, or participating in an organization, group, or mob with the goal of perpetrating the above-mentioned acts on the grounds of sexual orientation, gender identity, or gender expression of the victims are **not criminalized in the existing Criminal Code**, although all of these acts are considered criminal when motivated by race, nationality, ethnicity, religious or political beliefs (Articles 162 and 163 from the CC).

Four active NGOs with focus on the LGBTI community existed **in 2017**, whose activities had public visibility: **the Bilitis Resource Centre, GLAS, the Action Youth LGBT Organisation and Single Step**. The 10th Sofia Pride was organised on 10 June 2017, in which at least 3,000 people participated.⁸ The interaction of state and municipal bodies with the LGBTI community and its non-governmental organisations and advocates **remained poor and formal** in 2016 and 2017 and was limited mostly to the coordination of carrying out the Sofia Pride parade. None of the LGBTI organisations received any state or municipal funding, nor did they partner with these institutions on any projects or activities. The visibility of the LGBTI community **in the media continued to be low in 2016 and 2017**. The main reason for media attention continued to be the Sofia Pride parade. The main focus of discussion was still whether or not LGBTI people in Bulgaria are at all subjected to discrimination, which detracts from paying closer attention to the specific issues encountered by that community.

4. RIGHTS OF PERSONS WITH DISABILITIES

While the disability **employment** rate in Bulgaria appears only moderately low, compared to the EU average, the **gap between disabled and non-disabled persons is very wide**. The same is true for unemployment and the rate of economic activity is also low. Disabled people in Bulgaria have

⁸ Sofia Pride. (2017) Facebook publication accessible on the Internet at: <https://www.facebook.com/sofiaprideparade/photos/a.334452526620245.77265.324662370932594/1461458650586288/>.

significantly lowered chances to enter the labour market and to find work (and these data do not include people living in institutions who may be very far from the labour market). Government efforts to boost employment do not seem effective so far.⁹ The approach to employment of disabled people continues to support employers failing to assist disabled people in their efforts to get and sustain a job – appropriate transport means, technical aids or personal assistance, not to mention the lack of accessible environment, which restricts their mobility in general. **The results are limited to ‘subsidised employment’** for the duration of the grant scheme under the Human Resource Development Operational Programme. The major weakness of these schemes rests with their design, which provides for minimum monthly wage plus social security contributions paid by the Operational Programme to the employers hiring registered unemployed people with disability status ignoring individual needs of the disabled job applicants.

The government **does not plan any measures related to ensuring accessibility, providing for flexible working arrangements and targeted vocational training and employment for persons with disabilities.** Instead it maintains the status quo of granting disability status on the basis of diagnosis and pension status based on the latter. The 2018 National Employment Action Plan again, as in previous years, mentions the persons with disabilities as a priority target group for active employment measures in the labour market among other disadvantaged groups. Without any concrete numbers they are mentioned in the Projects “Horizons 3”, “We can too”, “Active inclusion” as a target group for support and inclusion in the labour market. The only concrete numbers regarding persons with disabilities are identified in the earmarked measures under the *Employment Promotion Act (EPA)*.¹⁰

Education levels reported for disabled people are low and no data is available on early school leavers due to disability. However, the result is demonstrated through high unemployment rates and strong dependence on social welfare, i.e. remarkable poverty among disabled population. The gap in school leaving is very large and is unfortunately increasing. The effect of the implementation of the 2017 state efforts for coping with this situation is still unclear. The National Network for Children (umbrella NGO) states that the **weaknesses in prevention of early drop outs** so far are the **still unclear effect of its implementation, the short deadlines and the lack of good organisation of the interinstitutional teams by coverage, the unequal involvement of different professionals and the incomplete source database of children subject to compulsory education.**¹¹

Inclusive education is supported mainly by a EU funded project the implementation and the products of which are still non-transparent. Tools and methodologies for inclusive education to comply with the 2016 Education Act are lacking. Evaluation of the quality of inclusive education is not being performed. The Network for Children (NGO) states that their experts assess with a very low mark the progress in the inclusive education field in 2017 *“due to the partially secured conditions for the implementation of the legislative initiatives launched in 2016. Sustainable and timely funding and*

⁹ Ministry of Labour and Social Policy, *Fiche for Programs, Projects and Measures funded by the State budget*, Annex 3 at the 2018 National Employment Action Plan.

¹⁰ Ministry of Labour and Social Policy, *Fiche for Programs, Projects and Measures funded by the State budget*, Annex 3 at the 2018 National Employment Action Plan, available at:

<https://www.mlsp.government.bg/index.php?section=POLICIESI&l=249&lang=>.

¹¹ National Network for Children, *2018 Report Card*, p. 36, available in English at: http://nmd.bg/wp-content/uploads/2018/05/Report-Card-2018_EN.pdf.

provision with specialists, methodologies, tools and practices has not been yet secured despite the presence of legal requirements.”¹²

Disabled people in Bulgaria face the **highest overall risk of poverty or social exclusion** in the EU. The at-risk-of-poverty rate after social transfers was 29% (again the highest in the EU).¹³ Disabled materially deprived people in Bulgaria are three times more than EU average. These risks are persistent and present a major policy challenge for Bulgaria. The 2016-2017 developments in the field of pensions were focused on planning and establishing a **new assessment procedure**¹⁴ of persons with disabilities provoked rather by suspicion of misuse of disability status related to pensions than by political will and effort to comply with the UNCRPD approach. People with complex support needs, i.e. disabled people due to barriers in the environment, as defined by the UN CRPD, though fully capable to work, are left out of the labour force and have no opportunities for employment due to the lack of individual employment related supports

In January 2018 the Council of Ministers adopted the **Action plan 2018-2021 to the National Strategy for Long term Care** - a welcome development, however, prioritising the establishment of family-type accommodation centres (FTAC), day-care centres and centres for rehabilitation rather than the provision of sufficient and effective support for independent living of persons with disabilities warns for further social exclusion.¹⁵ A **working group** within the Ministry of Social Policy was set up in May 2018 to involve disability and human rights NGOs in the process of evaluation of the concrete proposals from municipalities of development of services under this plan. As of August 2018 a few municipalities had submitted their proposals. The **available alternatives to placement in institutions** are personal assistance services provided at home, day care provided in day care centres as well as placement in residential accommodation centres in the community (although some of them are just part of existing or “closed” institutions). The persons with disabilities and persons over the age of 65 who receive personal assistance in their homes are around 17,000¹⁶ and those in need who applied for personal assistants are around 40,000. Persons with disabilities who receive disability pensions are over 500,000 and those who receive disability allowances are around 500,000, according to official data.¹⁷ It is obvious that the available community-based services as personal assistance, day care and residential placement “in the community” are **not sufficient to respond to the demand**. Moreover, **none of these services is tailored to the needs and wishes of the persons with disabilities to whom it is provided and independent research in their quality is not performed**. At the background of some development in the field of community-based services the **situation in institutions for persons with mental disabilities** remained the same. In May 2018, the Council of Europe’s **Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)** published the report¹⁸on its seventh periodic visit to Bulgaria, which took place

¹² National Network for Children, 2018 Report Card, p.38.

¹³http://ec.europa.eu/eurostat/statistics-explained/index.php/Disability_statistics_-_poverty_and_income_inequalities.

¹⁴<https://www.mlsp.gov.bm/ckfinder/userfiles/files/dokumenti/drugi/nasoki-ekspertiza-obst-obsajdane.pdf>.

¹⁵ Action Plan for the 2018-2021 period on the Implementation of the National Strategy for Long-term Care, <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=3108>.

¹⁶ Implementation Report of the 2015-2016 Action Plan for Implementation of the National Strategy for Reduction of Poverty and Social Inclusion, <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=790>

¹⁷ Social Assistance Agency, 2016 Annual Report, p.40.

¹⁸ Council of Europe, Committee for the Prevention of Torture. *Bulgaria: Anti-torture committee says conditions in social care institutions could be described as inhuman and degrading; the situation in penitentiary establishments generally improved*, 4 May 2018, Available at: <https://www.coe.int/en/web/cpt/-/bulgaria-anti-torture-committee-says-conditions-in-social-care-institutions-could-be-described-as-inhuman-and-degrading-the-situation-in-penitentiary->

from 25 September to 6 October 2017. The CPT concludes that it "cannot escape the sober conclusion that residents in the social care establishments visited had *de facto* been abandoned by the State, which had manifestly totally failed to provide those vulnerable persons with the human contact, comfort, care and assistance they required, as well as the dignity they deserved. It is equally regrettable that staff (and the management) of these establishments had been left to struggle from day to day with totally insufficient human resources, without adequate funding and without any attention or support from the Bulgarian authorities."

In 2017, the positive tendency of closing down institutions for children continued.¹⁹ However residential care facilities where many institutionalized children were accommodated often reproduce the institutional model of care. De-institutionalisation of children's services in Bulgaria still does not contain sufficiently effective measures for promotion of family support, foster care and adoptions²⁰ and leaves the entrance to institutions for babies open especially for poor children and children with disabilities.²¹ Development of early child development services is lagging. Research in quality of community-based services both for children and adults with disabilities is non-existent in practice. Technical aids are outdated and assistance is provided on a year-by-year project basis. In 2018 disability NGOs started protests against the current personal assistance schemes and the adopted amendments in the disability assessment mechanism. In 18 July 2018, the government adopted amendments (enforced from 27 July 2018) to the *Medical Assessment Ordinance* and the *Regulations for the Structure and the Work Management of the Medical Assessment Bodies and the Regional Disability Claims Management System* despite disagreement on the part of nationally represented organisations of persons with disabilities and criticism from medical doctors. The amendments try to reduce the administrative burden of the assessed persons by reorganisation of the Territorial Expert Medical Commissions, by reducing the assessment timespans, by removing the obligation of assessed persons for personal attendance at the assessment meetings in case their medical documents reflect fully their health situation. Another target of the amendments is the facilitation of the formation and the flexible operation of the TEMCs (as the TEMC and the doctors in them were extremely insufficient so far) by introducing the option that the medical doctors who are members of the Commissions to perform also other medical activities apart from this. The Medical Assessment Ordinance amendments aim at simplifying the math formula for assessment of multiple disabilities. Negotiations between NGOs, the government, the Ombudsman and the Parliament still continue with no clear vision of the outcome as even the NGOs are not united and consistent in their positions.²²

5. VIOLENCE AGAINST WOMEN, DOMESTIC VIOLENCE

Bulgaria failed to implement any institutional, organisational or legislative measures aimed at combating violence against women. A study conducted in 2017 by the European Institute for Gender

¹⁹ Bulgarian Helsinki Committee, 2017 Annual Report, p.139, available in English at:
http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2017_issn-2367-6930_en.pdf.

²⁰ Bulgarian Helsinki Committee, 2017 Annual Report, p.144.

²¹ Bulgarian Helsinki Committee, 2017 Annual Report, p.141.

²² Opinion by the Nationally represented organisations of and for people with disabilities presented to the Parliamentary Committee on Labour, Social and Demographic Policy on 5 July 2017.

<http://www.parliament.bg/pub/cW/20180705061417Stanovishte%20na%20NPOHU%20po%20ZLP,%20854-01-62.pdf>

Equality of the European Union (EIGE) revealed very **alarming attitudes and tendencies in Bulgarian society** in this respect.²³ On the basis of data accumulated by Eurostat and the EU Agency for Fundamental Rights, EIGE produced an index of the violence against women, in which **Bulgaria has the poorest performance and ranks 28th**. The Index consists of three main indicators: **distribution, seriousness and reporting of the cases of violence**. Bulgaria occupies the last position in the European Union not only with respect to the general evaluation of the indicators, but also as autonomous scoring on two of the three indicators, namely: seriousness and reporting of the cases of violence. In other words, **women in Bulgaria fall victims of the most serious forms of violence, but signal least frequently about that**.

Continuing its 2015 initiative, the BHC again made an attempt to supply part of the missing information about the violence against women by **outlining the scope and the principal characteristics of the most severe criminal offences against the personality of women: murders**. However, they should not be examined isolated from the other forms of discrimination and violence against women, but only as the tip of the pyramid, with the unequal power relations between women and men and the stereotypes connected with the social role of the gender – at the base of the pyramid. According to the data from the study conducted by BHC on the case law for murders, **in 2017 there were 29 sentences in cases of premeditated murders, attempted murders and death caused by negligence as a result of deliberate injury inflicted upon women aged above 14 years**.²⁴ All judicial acts ended with conviction. The defendants in 27 of the cases (93%) were men. Out of these 27 cases 19 are for deliberate murders, 6 – for attempted murders, which remained unfinished due to circumstances not dependent on the perpetrator and 2 – for death caused by negligence as a result of deliberately inflicted injury. In 25 of the cases (93%) the victim and the perpetrator knew each other prior to the crime. In 12 of the cases (44.4%) the murders/ attempted murders were committed by the victim's current or former partner; in seven cases (26%) – by the victim's son; in six cases (22.2%) – by another relative or acquaintance of the victim and in only two cases (7.4%) – by a stranger. In 11 of the judicial acts studied (39%) there is information that the defendant had exercised physical violence against the victim in the past as well, whereby five of the physically ill-treated women had officially signalled the law enforcement bodies and had sought protection from the aggressor. Death followed for eight of the eleven women about whom there is evidence in the cases that physical violence had been exercised against them in the past.

On 21 April 2016 Bulgaria signed the Council of Europe *Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)*. This however was not followed and is not likely to be followed by ratification. The end of 2017 marked the beginning of one of the most destructive and irrational debates on human rights, which has ever taken place in Bulgarian society. The pretext was Bulgaria's commitment to the *Istanbul Convention*. The government made a

²³ European Institute for Gender Equality of the European Union (2017). Gender Equality Index 2017: Measurement Framework of Violence against Women. Accessible on the Internet in English at: <http://eige.europa.eu/rdc/eige-publications/gender-equality-index-2017-measurement-framework-of-violence-against-women>.

²⁴ The data presented have been taken from the case law concerning murders of all district courts in Bulgaria for 2017. With the aim of collecting the data, requests for access to information were filed under the Access to Public Information Act to the 27 district courts in the country and to the Sofia City Court, which examine under the law cases of deliberate murders as first instance. The requests were for information on the numbers of the cases for deliberate murders, in which judgements were pronounced in 2017. Until 10 February 2018, such information was received from 25 district courts. After examining the judgements, which are accessible – as a rule – on the Internet, those in which the victims are women were identified and analysed. The absence of the information from the remaining three courts was compensated by examining the entire case law for 2017 of the district courts in question.

motion in that regard. This mobilized different types of opposition – nationalists, anti-Europeans, homophobes, religious activists and persons with conservative family values. Many of the opponents of the ratification turned their backs entirely to the subject matter of this international treaty, introduced themes that are entirely alien to it and used the latter for their own political and ideological purposes. They decided that the convention is likely to introduce the “third sex” into the Bulgarian legislation, to legalize same-sex marriages and to introduce concepts (such as “gender”) that are entirely alien to the Bulgarian law and culture. This went hand in hand with **open incitement of discrimination against women, homophobia, transphobia and hatred** of the values underpinning Bulgaria’s membership in international organisations at European and global levels. Many political leaders, who otherwise competed to introduce measures to cope with crime – from home thefts to high level corruption – turned their backs to the systematic criminal infringements against the women in Bulgaria. The proponents of the ratification were some NGOs receiving international funding for human rights and gender equality and some, although not all the politicians of the ruling GERB party. Strong opponents of the ratification among the political parties included the United Patriots from the government coalition, as well as the Bulgarian Socialist Party, the major oppositional force. The ruling party decided to refer the Istanbul Convention to the Constitutional Court.

In a striking 8 to 4 decision of 27 July 2018 the Constitutional Court found that the text of the *Istanbul Convention* contradicts the *Constitution*. The Constitutional Court states that "the Convention is inherently contradictory, and this contradiction creates double layer. Thus, the content of some of its provisions goes beyond the stated objectives of the Convention and its name". The Constitutional Court further argues that when the Convention "introduces the expression "gender identity", it stems from the assumption that the social dimension of gender is independent from the biological one. Distancing from the concept of "sex" as a biological characteristic - a man / woman, diverts the Convention from the stated goals of protecting women from all forms of violence. The internal contradiction of the Convention becomes clear when we compare the goals declared in Article 1 and its title, with the definition of "gender" in the Convention [...] This duality of the concept apparatus, of the meaning of the concepts used in practice, does not lead to the achievement of equality between sexes but deletes the differences between them, thus stripping the principle of equality of its meaning". The ambiguities and internal contradictions of the *Istanbul Convention* thus contradicts the principle of legal certainty inbuilt in Article 4, §1 of the *Constitution*, which provides that Bulgaria is a state ruled by law.²⁵

The Constitutional Court decision is perhaps **the worst in the court’s history since its establishment**. It shows poor understanding of the object and purpose of the *Istanbul Convention*, failure to grasp the meaning of some basic concepts relating to the global fight against gender-based violence and deep-rooted biases and stereotypes on the part of the Constitutional Court judges. It effectively blocks the prospects of ratifying the convention by Bulgaria in the foreseeable future. Moreover, it prevents giving of practical meaning and even the legal usage of some basic concepts underlying the policies for combating gender-based violence, such as “gender”, “gender identity”, and “gender-based violence”. The latter became dirty words in both the official and the common parlance in Bulgaria.

²⁵ Constitutional Court, *Decision No. 13/2018* of 27 July 2018.

6. PROHIBITION OF TORTURE AND CONDITIONS OF DETENTION

Torture and ill-treatment continue to be a serious problem in the Bulgarian criminal justice system. In its public statement of 15 March 2015, the European Committee for the Prevention of Torture (CPT) observed a significant number of allegations of deliberate physical ill-treatment of persons detained by the police, which were on the rise in some places of detention.²⁶ **Every third detained person is a victim of physical abuse** by the police upon arrest and in police stations. Abuse in police stations prevails over the violence used upon arrest.²⁷ The share of Roma who report being victims of physical violence is twice higher than that of the Bulgarians.²⁸ **Detained persons who do not have lawyers are twice more likely to become victims of police abuse.**²⁹ Although in 2015 the Ministry of Interior adopted an Ordinance on the Use of Force and Auxiliary Means,³⁰ it does not keep a record on the cases of this use and the police officers that use unlawful force are not prosecuted and punished. Researches of practice show that there is still no operational information system about the investigations of police ill-treatment, that such cases investigated and prosecuted in judicial proceedings are much more likely to end with punishment than the internal administrative investigations and that **police ill-treatment is punished rarely and with very light penalties leaving the victims with no effective protection mechanism.**³¹ European Court on Human Rights cases about police brutality in Bulgaria continue to confirm violations of Article 3 and Article 13 of the European Convention on Human Rights but they are not reflected in the national jurisprudence and impunity of these cases in the national context is dominant.

The Bulgarian legislation and practice reveal serious deficiencies regarding the safeguards against ill-treatment during the 24-hour police detention. Practical and meaningful operation of fundamental safeguards against police ill-treatment (including the notification of third party, access to a lawyer, access to a doctor, and information on the rights) is not ensured. The right of access to a lawyer is a fundamental right under the *Constitution of the Republic of Bulgaria*; this right can be exercised immediately upon arrest or at the time of presenting a criminal charge to a person. However, Bulgarian domestic law and jurisprudence define the 24-hour police detention measure of an individual suspected of having committed an offence as an **administrative measure regulated by administrative law that falls outside the scope of the national criminal proceedings *sensu stricto*.** Since suspects detained by the police do not have formal standing in criminal proceedings, their access to a lawyer and right to legal aid **are not guaranteed in the same way as in the case of the accused.** In police detention the legal assistance should be provided only upon request of the detainee. Vulnerable groups, such as children or persons with mental disabilities for whom there is mandatory defense in criminal proceedings, are not protected before the presentation of the formal charges.

²⁶ CPT, *Public Statement on Bulgaria*, 15 March 2015, CPT/Inf (2015) 17, § 5.

²⁷ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2015* (2016), p. 10.

²⁸ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2015* (2016), p. 10.

²⁹ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), pp. 15-16.

³⁰ Ministry of Interior, *Ordinance 8121z-1130* of 14 September 2015 about the order of use of force and auxiliary means by the officers of Ministry of Interior, available in Bulgarian at:

<http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=97494>.

³¹ Bulgarian Helsinki Committee, *The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons* (2017), pp. 10-11.

During the 24-hour administrative police detention even when the detained person asks for access to defence counsel, that does not oblige the police authorities to secure him one, and not to conduct an “exploratory talk” with him/her. Nor are they obliged by law to inform the accused that he/she may refuse to answer questions. That became clear from the ECtHR judgment on the case of *Dimitar Mitev v. Bulgaria* of 8 March 2018, in which the applicant, detained on suspicion of having committed a crime, asked for an attorney, but was given no access to one. He was not warned that he may refuse to answer questions and was questioned. He confessed of a serious crime. His confession could not become a basis for conviction but he was nevertheless convicted on the grounds of witness evidence of operatives. The Court found violation of Article 6.3c of the Convention due to the fact that the applicant was not assisted by an attorney when he made the confession, although he asked for one.³²

After the 2015 ECHR judgment on the case of *Neshkov and others v. Bulgaria*³³ and the Committee for Prevention of Torture’s public statement, the conditions in places for detention were reported as being in process of improvement. A major improvement was the amendment of the *Execution of Punishments and Detention on Remand Act* enforced in February 2017.³⁴ Article 3, paragraph 2, of the act determines the **detention conditions, which constitute inhuman or degrading treatment or punishment towards individuals serving a sentence, as well as those detained on remand**. According to this provision, “as violation of paragraph 1 shall be deemed [...] deprivation of sufficient living floor space, food, clothing, heating, lighting, ventilation, medical services, conditions for exercise, continued incommunicado segregation, ungrounded use of auxiliary means as well as other such acts, omissions or circumstances, which diminish human dignity or arouse a feeling of fear, vulnerability or inferiority”.

The main accents of the other amendment are: **determination of the detention conditions which constitute inhuman or degrading treatment or punishment** towards individuals serving a sentence as well as those detained on remand; **introduction of a minimum standard for personal living space** in sleeping premises at all prisons and detention centres in Bulgaria **set at 4 sq. m. per prisoner or detainee**; possibility the courts to assign the general regime to those convicted for serious crimes who are not considered a threat to society and to review the initial strict regime one year after it has been assigned; **right to appeal decisions** issued by the bodies responsible for the execution of punishments before the competent administrative court by place of detention; **right to request from court the termination of any action or inaction** by bodies responsible for the execution of punishments or by officials should these **constitute violation of the prohibition of torture, inhuman and degrading treatment**; **right to claim compensation** for damage inflicted by bodies responsible for the execution of punishments in cases of torture, inhuman and degrading treatment; introduction of **more favourable regime for conditional early release** in the *Criminal Procedure Code*. In 2017 the legislative amendments led to reduction of overcrowding and to slow improvement of material conditions. The amendments of February 2017 and the introduction of compensatory means of protection also resulted **in increased number of new court cases against Execution of Punishments Directorate under the State and Municipalities Responsibility for Damages Act (SMRDA)**, filed by detainees. In 2016 their number was 255, on 55 of them judgements against Execution of

³² ECtHR, *Dimitar Mitev v. Bulgaria*, Appl. No. 34779/09, Judgment of 8 March 2018.

³³ ECtHR, *Neshkov and Others v. Bulgaria*, Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, judgment of 27 January 2015.

³⁴ *Execution of Punishments and Detention on Remand Act*, available in Bulgarian at:
<https://www.lex.bg/laws/doc/2135627067>

Punishments Directorate were pronounced. In 2017 their number reached 420, and the judgements against the Directorate were 103.

BHC observations reveal that despite improvements overcrowding of some prisons is a serious problem, which is additionally aggravated by the fact that in some cases there are discrepancies between the official data and the actual situation. **In half of the visited establishments the beds and bedding are in poor condition and the cells lack adequate natural lighting.** In terms of sanitation the issues are mostly related to pests and the number and design of toilet fixtures: **many of the establishments are infested with pests and vermin, and in some places the cells are either not equipped with toilet fixtures at all (which necessitates the use of buckets for physiological needs during the night) or the bathroom stalls are separated with partial walls only.** Personal hygiene items are insufficient, the showers do not always have a constant supply of running warm water and the shower stalls are not equipped with privacy walls (and in some places the shower area is used by 40-50 prisoners at once).

The biggest issue found in the **isolation cells** in most of the establishments is that they are inadequately lit and there is not enough ventilation; in addition, prisoners placed in isolation cells often have no access to running water that is suitable for drinking at all times. The duration of the punishment may exceed 14 days and a large number of the interviewed inmates expressed scepticism about the efficacy of the process of appealing the punishment, which explains their reluctance to exercise their right to appeal.

7. TRAFFICKING OF HUMAN BEINGS

Combating trafficking in human beings in Bulgaria faces the main challenges of the low conviction rates, poor service provision to victims and the legal, financial and expertise obstacles to ensuring effective protection of victims, both children and adults. Identified victims of trafficking and the criminal proceedings of trafficking have been decreasing from around 540 in 2013 to around 323 in 2017 according to official data.³⁵ **The conviction rates in general seem low.**³⁶ Protection services for victims under the 2003 *Combating Trafficking in Human Beings Act* were supposed to be the shelters for temporary accommodation three of which were set up only in 2016 with a total capacity of 14 persons and one in 2017, the overall capacity being 34 persons for the whole country.³⁷ In the meantime the protection of these victims was and is provided by the crisis centres (with a total capacity of around 220 places)³⁸ – residential services that are not adapted to the needs of victims of trafficking and do not provide regular medical care, attendance of school for the children and legal services and protection from the traffickers. Placement of children-victims of trafficking in crisis centres amounts to deprivation of liberty.

³⁵ National Commission for Combating Trafficking in Human Beings, *2016 Annual Report*, pp. 7-8, available in English at: <http://antitraffic.government.bg/en/%D0%BD%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%B5%D0%BD%D0%BA%D0%BE%D0%BB%D0%BD%D0%BA-2016/>.

³⁶ National Commission for Combating Trafficking in Human Beings, *2017 Annual Report*, p. 30, <http://antitraffic.government.bg/en/%D0%BD%D0%B0%D1%86%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%B5%D0%BD%D0%BA%D0%BE%D0%BB%D0%BD%D0%BA-2017/>

³⁷ NCCTHB, *2017 Annual Report*, p. 18.

³⁸ *Ibid*, p. 18.

8. TREATMENT OF IMMIGRANTS (ASYLUM PROCEDURE, PUSH-BACKS, ILL-TREATMENT)

Since 2014 the number of migrants entering Bulgaria has increased. Those who have to stay in Bulgaria face serious difficulties in dealing with the discriminatory attitudes of authorities and of private individuals and groups. During the period 2014-2016 the Bulgarian Helsinki Committee has received **numerous complaints from migrants of bias motivated physical abuse, robberies and insults by border police and other law enforcement officials**.³⁹ Private vigilante groups “hunting” for migrants near the Bulgarian-Turkish border have also physically abused, detained and robbed migrants on numerous occasions. Prosecution offices and courts acquit the perpetrators. Provision of interpretation, legal aid and accommodation for immigrants seeking protection is a serious challenge. Integration in Bulgaria for refugees is lacking.

During the peak of the refugee crisis the reception centers faced serious overcrowding. The situation improved in 2017 and 2018 due to the decrees of the number of asylum seekers. The big number of asylum seekers led to **deviations from the legal standards and good practices in asylum procedure**. The **quality of the decisions delivered by the refugee administration deteriorated** in substance. In 2016 the decisions on asylum applications correctly identified the reasons for granting asylum pursuant to the law in only 16% of the cases, and only 26% of the decisions included a review and discussion of the main elements of the applicant’s refugee story. In 67% of the cases the facts and circumstances matched the legal outcome of the decision, but only 16% of the decisions contained a review of all substantive issues of the declared refugee story. **Asylum seekers were not granted legal assistance**. The **most serious issue** facing the refugee and immigration system – one that has not been resolved for over 20 years now – remains **guardianship, care and procedures relating to unaccompanied children**.

At the end of 2016, the refugee legislation was amended⁴⁰ and restriction of the freedom of movement was introduced for the persons seeking protection during the proceedings before SAR.⁴¹ The most negative development in 2017 was the broadening of the practice to conduct refugee procedures in conditions of immigration detention in Special Homes for Temporary Accommodation of Foreigners (SHTAF) of the Migration Directorate of Ministry of Interior. The delay of the access to procedure for the persons who had applied for asylum from the administrative centres for detention of foreigners – SHTAF – deteriorated in 2017. If in the previous year the **average detention period** for persons seeking protection was 9 days, in 2017 that period increased to an average of 19 days.⁴² **Translation, interpreting and communication** in a comprehensible and preferred language during the proceedings for providing international protection and status were not secured for all persons seeking protection. **Legal aid** at the procedure phase conducted before SAR is provided only to persons from vulnerable groups in 2018. Standard operational procedures

³⁹ Bulgarian Helsinki Committee, *BHC calls on authorities to investigate reports of systemic human rights violations regarding refugee access to territory and international protection*, 18 November 2016, available at: <http://www.bghelsinki.org/en/news/press/single/bhc-calls-authorities-investigate-reports-systemic-human-rights-violations-regarding-refugee-access-territory-and-international-protection/>.

⁴⁰ State Gazette No. 96 of 6 December 2016, Article 29(1) item 1 LAR.

⁴¹ Bulgarian Helsinki Committee, 2017 Annual Report, p.118.

http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2017 ISSN-2367-6930_en.pdf

⁴² Bulgarian Helsinki Committee, 2017 Annual Report, p.116.

were adopted for identifying and work with persons from vulnerable groups, including unaccompanied minors, only in the beginning of 2018. It is not possible at present to assess how they work in practice. The situation of zero integration of the refugees in Bulgaria continues already for the fourth year in succession.⁴³

9. FORCED EVICTIONS OF ROMA FROM THEIR ONLY HOMES

The Bulgarian legislation and practice on forced evictions does not comply with the standards of the Covenant in that it allows for such evictions on the sole basis of the inhabitants' unlawful occupation of a property or of the unlawful construction of the property, without due consideration of the risk of their becoming homeless in a situation in which satisfactory replacement housing is not immediately available to them.⁴⁴ There have been no changes in the legal situation in Bulgaria over the past five years. On the contrary, in 2017, the situation **deteriorated in practice, part of the deterioration resulting from racist instigation originating from or finding support among the extreme nationalists who participate in the government.** Bulgarian authorities failed to amend the *State Property Act* (SPA), *Municipal Property Act* (MPA) and *Spatial Planning Act* (SpPA), which would guarantee proportionality of the actions aimed at forced evictions of persons from their only homes. Research in the situation of the Roma families whose only homes are destroyed indicated that provision of alternative placement is not a practice.⁴⁵

With the inclusion in the government of the ultranationalist coalition of the United Patriots in 2017, whose three parties have incited for years anti-Roma sentiments in society, the local authorities in a number of Bulgarian towns and villages launched massive campaigns over the year to demolish illegal dwellings of Roma people, built over privately owned or municipal land. **In most cases those were houses built decades ago, which the municipalities tolerated during all that time.** What is more, some municipal authorities implicitly recognised the existence of these buildings over the years: citizens of Roma origin who turned to the BHC were registered as permanently residing at the addresses of the houses marked for demolition; for other buildings the municipal authorities had calculated for years taxes and fees; service providers were supplying electricity and water – not without the knowledge and cooperation of the authorities – to some of the buildings. In all cases in which the BHC provided legal aid and representation in court to the citizens of Roma origin, **the local authorities had not offered any alternative accommodation to the families threatened with planned demolitions of their homes.** In most of these families there were children, including newborn babies, as well as people with serious health problems. In most cases the buildings targeted to be demolished were the only home of the families living in them. In all cases the families could not afford to buy or even rent another place to live in, because they lived below the poverty threshold estimated by the National Statistical Institute. They were all doomed to homelessness and life in the street – the fate of a number of other families for whom the limited resources made it impossible for the BHC to reach them.⁴⁶ The affected Roma citizens, who received legal aid from the BHC in

⁴³ Bulgarian Helsinki Committee, 2017 Annual Report, p.120.

⁴⁴ See: HRC, *Naidenova et al v. Bulgaria*, No. 2073/2011, Views of 30 October 2012, § 14.7. See also ECtHR, *Yordanova and Others v. Bulgaria*, No. 25446/06, Judgment of 24 April 2012.

⁴⁵ Bulgarian Helsinki Committee, 2017 Annual Report, p.141.

⁴⁶ Bulgarian Helsinki Committee, 2017 Annual Report, p.42.

connection with the described events, were a total of 87 persons from three Bulgarian towns: Asenovgrad, Plovdiv and Sofia. Hundreds of other Roma were evicted from their homes in the period under consideration in Varna, Burgas, Stara Zagora, Vidin, Kazanluk, Gurmen and other cities.

10. RIGHT TO LIBERTY AND SECURITY OF PERSON AND RIGHT TO PRIVACY – DEVELOPMENTS IN LEGAL CAPACITY LEGISLATION AND PRACTICE

After the ECHR delivered its judgment on the case of *Stanev v. Bulgaria*⁴⁷ in 2012 and the UN Convention on the Rights of Persons with Disabilities was ratified, the work on review and elaboration of new legislation on abolition of plenary guardianship and introduction of supported decision-making measures has started. As a result of it a draft of ***Natural Persons and Support Measures Act***⁴⁸ was adopted by the Government in 2016 and introduced for voting in the parliament but after the Government resigned and new parliament was elected in 2017 there are no developments in this field. **The draft law is centered on the UN CRPD recognition of legal capacity concept and was elaborated to implement the supported decision-making concept in legislation.**

A field research showed that the majority of the persons with intellectual disabilities or/and psychosocial problems living in institutions and community-based residential services are placed under guardianship.⁴⁹ Again degrading and inhuman treatment was identified in these institutions and very rarely individual approach and respect to the human rights of the residents in the new residential services was ensured.⁵⁰

The adopted 2016 amendments in the *Social Assistance Act* and its regulations⁵¹ cannot provide for better provision of care and services to this group of people. **No judicial review is provided for the placement of persons under partial guardianship in institutions or residential community services.** The assessment of the needs of the detained persons and of the availability of support services/measures should be done by administratively appointed concrete “specialists” in a

⁴⁷ ECtHR, *Stanev v. Bulgaria*, application No. 36760/06, Judgment of 17 January 2012. This case was a joint litigation project of the Bulgarian Helsinki Committee and the Budapest-based Mental Disability Advocacy Centre. The two organisations provided the applicant's legal representation in the proceedings. In 2000, Mr Rusi Stanev was placed under partial guardianship by a Bulgarian court and a municipal employee was appointed as his guardian. In 2002, without ever having met Mr Stanev, the guardian had him placed in a social care institution in a remote mountainous area 400 km from his home. Once there, the director of the institution became his guardian and controlled all of his affairs. The conditions in the institution, as documented by the Council of Europe Committee for the Prevention of Torture, were extremely substandard. The amount of food was insufficient, the residents were obliged to sleep in their coats during winter due to the lack of proper heating, the sanitary facilities were nothing more than holes in the ground covered by dilapidated shelters in the institution courtyard. Mr Stanev had no ability to challenge this situation as he could not initiate any legal proceedings, including proceedings to lift his guardianship, without his guardian's consent.

⁴⁸ Bulgaria, Council of Ministers, Draft Natural Persons and Support Measures Act, available in Bulgarian at: <http://parliament.bg/bills/43/602-01-48.pdf>.

⁴⁹ Bulgarian Helsinki Committee, *The Non-happening Deinstitutionalization of Persons with Mental Disabilities* (2016), monitoring report, Sofia, available in Bulgarian at:

[http://www.bghelsinki.org/media/uploads/documents/reports/special/2016_nesluchvashtata_se_deinstitucionalizacia_na_licata_s_umstveni_zatrudnenia_v_bulgaria_\[978-954-9738-37-7\].pdf](http://www.bghelsinki.org/media/uploads/documents/reports/special/2016_nesluchvashtata_se_deinstitucionalizacia_na_licata_s_umstveni_zatrudnenia_v_bulgaria_[978-954-9738-37-7].pdf).

⁵⁰ *Ibid.*

⁵¹ Bulgaria, *Regulation for Implementation of the Social Assistance Act*, Art. 16a(3), Art.40 and Art.40a, available in Bulgarian at: <http://lex.bg/bg/laws/Idoc/-13038592>.

multidisciplinary team for whose independence and competence no guarantees are provided in the law. According to the provisions of the Regulations, the person to whom services are to be offered (including the persons under partial guardianship) is included in the preparing of the evaluation and the plan, his/her wish is taken into consideration and is reflected in the evaluation and in the plan, which are signed by the individual personally. However, there are **no provisions on the procedure according to which this is to be done. There are likewise no provisions for the accommodation of persons who are incapable of expressing their will.** Similarly, no guarantees are provided against arbitrary temporary administrative placement of persons with partial guardianship, possibility for access to court with a view to lifting their guardianship, or effective means of compensation under the legislation on the liability of the state and the municipalities for damages.

11. FREEDOM OF ASSEMBLY AND OF ASSOCIATION

Several groups in Bulgaria experienced repeated violations of their rights to freedom of assembly and of association. **These were mostly members of the Macedonian and of the Turkish minority.** So far, the European Court of Human Rights issued 12 judgments on the right to freedom of assembly and freedom of association of ethnic Macedonians. The last ones were from January 2018.⁵² In 11 of them the Court found violations of the right to freedom of assembly and of association due to the denials of the Bulgarian authorities to register Macedonian groups or because of arbitrary prohibitions of their peaceful assemblies. This long list exhibits systemic violations of the applicants' right to freedom of assembly and of association over a period of two and a half decades. No other representatives of an ethnic minority in Bulgaria have been subjected to such a repeated denial of their right to freedom of assembly and association. What underlines these denials is the unwillingness of the authorities to recognize Macedonian ethnic identity, although in many instances they claimed reasons other than the applicants' ethnic affiliation. These include propagation of ideas that undermine Bulgaria's national security, incitement to public disorder and discrimination, setting of statutory goals that are political in nature, as well as minor technical mistakes in the documents, which they submit for registration. All these reasons were found to be incompatible with Article 11 of the ECHR. Several other cases of denials of the right to freedom of association of ethnic Macedonians are pending before the ECtHR. The reasons are the same as those that the Court has already found to be incompatible with Article 11, which suggests that the Bulgarian authorities are prepared to find themselves in a constant breach of international law, rather than to recognize ethnic Macedonians and to register their associations.

On 8 June 2017, the ECtHR gave judgment in the case on the *National Turkish Union and Kungyun v. Bulgaria*, and found a violation of Article 11 of the Convention due to the fact that the Bulgarian courts refused to register an association aimed at encouraging the rights of the Muslim community in Bulgaria due to the alleged political goals of the association. The group of cases related to the violation of the right to freedom of association of ethnic Macedonians, as well as the case *National Turkish Union and Kungyun v. Bulgaria* are at present under an enhanced procedure of supervision

⁵² ECtHR, *United Macedonian Organisation Ilinden and Others v. Bulgaria* (No. 3), No. 29496/16, Judgment of 11 January 2018; ECtHR, *Yordan Ivanov and Others v. Bulgaria*, No. 70502/13, Judgment of 11 January 2018; ECtHR, *Kiril Ivanov v. Bulgaria*, No. 17599/07, Judgment of 11 January 2018.

by the Committee of Ministers. The latter expressed numerous concerns about the repeated denials of registration of Macedonian groups on grounds that had been found incompatible with the ECHR.⁵³

At the end of December 2016, the National Assembly adopted **amendments to the Non-Profit Legal Entities Act (NPLEA) and to the Commercial Register and the Register of the Non-Profit Legal Entities Act (CRRNPLEA)**. They came into effect on 1 January 2018. The aim of the amendments was to streamline the registration procedure for associations of citizens and foundations. Instead of registration in the courts, after the amendments come into force, the registration is to be done by the Registration Agency with the Minister of Justice. A register of non-profit legal entities is also kept there. The registration procedure is simplified and is intended to be faster. It is however unclear to what extent it can resolve the problems identified by ECtHR. On 15 June 2018 UMO Ilinden, the association, which had received the most denials for registration in the past, was denied registration under the new procedure again for reasons, which the ECtHR found to be incompatible with Article 11 of the ECHR – a statutory goal, which existed also in its previous statutes that were reviewed by the ECtHR, envisaging a possibility to propose independent candidates for parliamentary and municipal elections. The association appealed and the case is at present pending before the Blagoevgrad Regional Court.

12. FREEDOM OF CONSCIENCE AND RELIGIOUS BELIEF AND RIGHTS OF RELIGIOUS MINORITIES

In the period under review the situation regarding religious freedom in Bulgaria did not improve. In 2016 the openly discriminatory *Ban on Clothing that Partially or Completely Covers the Face Act* was passed. In addition, once again a series of offences were committed against representatives of religious denominations, which, for the most part, were not prosecuted by the state. The known offences included: vandalizing temples and assaulting religious worshippers; discriminatory depiction of rituals and religious identity by the media; the practice of passing local legislation by municipal councils that limits the religious activities of certain minority religious groups; cases of criminal prosecution against representatives of the Muslim community because of their religious beliefs. In 2017, as well as in preceding years, a number of hate crimes were registered, targeting the Muslim religious denomination in Bulgaria. Parallel with that, the United Patriots, a coalition partner in the government, tabled a bill in Parliament against “radical Islam” and it passed first reading.⁵⁴ If this draft legislation becomes a fact, it is highly probable that the religious freedoms of many denominations in Bulgaria, including the Muslims, would be seriously restricted.

The discriminatory practice of the courts to refuse to register other Orthodox Christian denominations, thus maintaining the monopoly of the Bulgarian Orthodox Church, continued throughout the year.⁵⁵

⁵³ See a summary of the Committee’s periodic reviews at:

[https://hudoc.exec.coe.int/eng#%22EXECIdentifier%22:\[%22004-3657%22\]}](https://hudoc.exec.coe.int/eng#%22EXECIdentifier%22:[%22004-3657%22]}).

⁵⁴ Bulgarian Helsinki Committee, 2017 Annual report, p.59-60, available in English at:

http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2017_issn-2367-6930_en.pdf.

⁵⁵ Bulgarian Helsinki Committee, 2017 Annual report, p.59-60, available in English at:

http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2017_issn-2367-6930_en.pdf.

In 2017, there were **44 municipalities in Bulgaria that voted ordinances restricting the right to peaceful preaching of religious beliefs**. Representatives of the Internal Macedonian Revolutionary Organisation (IMPRO), one of the parties in the ruling coalition in Bulgaria and principal initiator of such ordinances, indicated repeatedly that the aim was to restrict precisely the activities of Jehovah's Witnesses. So far that organisation had filed and won a total of eight cases against fines imposed as a result of similar ordinances. In all cases the administrative courts ruled in their favour. **Municipal ordinances were revoked in Burgas, Kavarna, Asenovgrad, Karlovo and Mezdra, and in Kyustendil, Stara Zagora and Shumen the municipalities are appealing the decisions before the higher instance.**⁵⁶

13. PROTECTION OF CHILDREN AND THE RIGHTS OF THE CHILD

The Bulgarian Juvenile Delinquency Act **was not amended** to allow the possibility of judicial review of the detention in homes for temporary accommodation of minors, as well as periodic judicial review, including upon request by the detained person, of the detention in a juvenile detention centre and in socio-educational boarding schools. The Juvenile Delinquency Act was not amended in compliance with the ECHR in 2017, and the **bill for diversion from criminal proceedings for minors and for imposing correctional measures**, which is expected to reform juvenile justice radically, **was not submitted to Parliament**.⁵⁷ A campaign and online petition was initiated by NGOs: the National Network for Children (NNC), the Social Activities and Practice Institute (SAPI) and BHC.⁵⁸

By the end of 2016, all institutions for children with intellectual disabilities had been closed down. However, ten of them turned into institutions for adults as the children who were placed in them turned 18. The first six years of deinstitutionalisation confirmed a steady trend of reducing the number of children in institutions. By June 2016, nearly two-thirds of children institutions (91 of 137) were closed down. **The total number of children and youth in specialised institutions decreased from 7,587 in 2010 to 1,232 or nearly six times.** By 1 June 2016, 2,355 children were in foster care, those living in residential care were 3,351, 4,755 children were adopted, 9,390 children were reintegrated in their biological families and 5,927 children were placed in foster care with families of relatives.⁵⁹

Despite the progress of deinstitutionalisation in childcare, **the positive trend was broken in 2016**. The institutionalisation of children did not stop. According to official data, 751 children and young people were placed in institutional care in 2016. By 1 June 2016, there were 46 childcare institutions: 29 institutions for children deprived of parental care (ICDPC) with 585 children aged 3 to 18 and 17 institutions for medico-social care for children (IMSCC) with 647 children aged 0 to 7.

⁵⁶ Bulgarian Helsinki Committee, 2017 Annual report, p.59-60, available in English at:
http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2017_issn-2367-6930_en.pdf.

⁵⁷ Bulgarian Helsinki Committee, 2017 Annual report, p.22.

⁵⁸ Citizens and NGOs demanded immediate reform in juvenile justice, [12 October 2017](http://www.bghelsinki.org/bg/novini/press/single/nezabavna-reforma-v-detskoto-pravosdie-poiskaha-grazhdani-i-nepravitelstveni-organizacii/#),
<http://www.bghelsinki.org/bg/novini/press/single/nezabavna-reforma-v-detskoto-pravosdie-poiskaha-grazhdani-i-nepravitelstveni-organizacii/#>

⁵⁹ Government of Bulgaria, *Updated action plan for implementation of the National Strategy "Vision for deinstitutionalisation of children in Bulgaria"*, October 2016,
<http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=601>.

With a decision 208 of **10 August 2015** the Council of Ministers **regulated the residential type of service for children in need of permanent medical care and provided for the mechanisms for closure of eight institutions for medico-social care for children.** A total of 208 children were assessed, 408 staff members were trained and supervised, 239 staff members were trained to work in the new services under a Chance for Happy Childhood Project. In the course of the project, 181 children were reintegrated in families. At the same time, the total number of children placed in these eight institutions was 342. As of October 2015, the eight institutions had been closed down.⁶⁰ Under the same project **eight complexes for “innovative integrated health and social services for children aged 0 to 3” were opened**, that include: seven family consultation centres, three foster care centres, five early intervention centres, three centres for child mental development, eight day care centres, two Mother and Baby Units, eight Mother and Child Health Centres, nine specialised residential care centres for children aged up to seven who need constant medical care.⁶¹

During the period January 2012 - 30 September 2015, 434 children aged up to 3, **including 149 children with disabilities**, were placed in family and close to family environment. Out of them, 11 were placed in other institutions, 159 children were adopted, 144 children were placed in foster families, 89 children were reintegrated in biological families, 9 children were placed in relatives' families and 33 children were placed in family-type accommodation centres and 27 of whom were placed in family-type accommodation centres for children with disabilities.⁶² However, the National Network for Children (NGO) comments in its 2016 report that the newly established services “are still not statutory regulated and there are no activities for ensuring their sustainability and financing mechanisms. This was the reason for the newly created complexes providing services to be forced to suspend their work”.⁶³ However, **no plans have been identified about the remaining 17 institutions for medico-social care for children aged 0 to 3 in the country.**

As of 1 January 2017, Bulgaria has **284 family-type accommodation centres of children and young people** (FTACs) throughout the country, **134 of which, or nearly half of all centres, host children and youth with disabilities**, including seven centres for family-type accommodation for children who need constant medical care. **According to expert assessments, nearly a third of the children with mental disabilities placed at FTACs exhibit risk behaviours.** Some of the children with harmful behaviour also have multiple disabilities and communicate only non-verbally. These factors turn them into a serious challenge for the staff providing the services who often lack the necessary qualification and choose the easy way out of the crisis by adhering to stereotypes and redundant common practices: **fixation (limitation) of movements, isolation or prescribed medical treatment to suppress behaviour despite the absence of a mental disability diagnosis.**⁶⁴ The instances of challenging behaviour grow more serious following relocation into the community, namely due to a

⁶⁰ Social Assistance Agency, *2015 Annual Report*, p. 40.

⁶¹ Ministry of Healthcare, *Report about the Implementation of Direction Family Project*, p. 7, available at:http://www.mh.government.bg/media/filer_public/2016/04/06/izpalnenie-na-proekt-posoka-semeystvo.pdf.

⁶² Ministry of Healthcare, *Report about the Implementation of Direction Family Project*, p. 12.

⁶³ National Network for Children, *2016 Report Card*, p. 29, available in English at: http://nmd.bg/wp-content/uploads/2016/06/EN_Belejnik-2016_web.pdf.

⁶⁴ In the summer of 2016 at a day centre for weekly care (DCWK) in the town of Pazardzhik the case was observed of a boy whose harming behaviour was “handled” through immobilisation by means of tying back the arms and establishing “control” by an older boy, also a client of the service, whom staff had assigned the task “to hold the arms of the aggressive boy to prevent him from hitting his head and face”. On the day of the visit by BHC researchers, the two boys were lying next to each other in the common bedroom with the older boy holding the arms of the younger one.

past of living in isolation, experts have argued. The full capacity of day centres for children with disabilities has been reached according to data provided by the municipalities, members of the National Association of Municipalities in the Republic of Bulgaria. Alternative services have not been made available everywhere. At the same time, FTACs do not necessarily provide transportation. As a result, in 2016 access to services supporting children with multiple disabilities remained limited. According to an assessment by LUMOS, 67% of the children at FTACs continue to live in isolation.⁶⁵

14. INDEPENDENCE OF THE JUDICIARY AND FAIR TRIAL

In 2017, no substantial amendments were introduced with a view to improving the legislative framework regulating the independence of the judiciary and the fair trial. Conversely, some amendments to the *Judicial System Act* and to the *Criminal Procedure Code* undermined the independence of the court and created prerequisites for violation of the rights of the parties in criminal proceedings.⁶⁶

The European Commission for Democracy through Law (the Venice Commission) criticized in its opinion: the **present composition of the Supreme Judicial Council; the power and unaccountability of the Prosecutor General** who is “essentially immune from criminal prosecution and is virtually irremovable by means of impeachment for other misconduct”; **the broad powers of the Bulgarian Prosecution outside the scope of criminal law** in discharging its constitutional powers of “supervision of legality”; the **role of the Supreme Judicial Council Inspectorate**.

At the end of October 2017, after discussions and criticism, the National Assembly introduced new amendments to the *Judicial System Act*. According to them, **automatic temporary suspension by the respective Supreme Judicial Council Judicial Chamber is allowed only if with his/her act the judge, prosecutor or investigator had committed an intentional indictable offence** (Article 132 of the Constitution). In all other cases of intentional indictable offence under Article 230, Paragraph 2 the Judicial Chamber “may suspend him/her” until the end of the criminal proceedings and “may hear the judge, the prosecutor or the investigator prior to reaching a decision.” In this way, although the October amendments introduced certain guarantees against possible prosecutor’s arbitrariness, allowing the suspended persons to be heard only as a possibility, not as an explicit requirement, as well as the absence of an obligation on the part of the respective Judicial Chamber to review the substance of the accusations, **do not guarantee a fair trial and do not rule out entirely the possibility of arbitrary prosecutor’s interference with the independence of the court.**⁶⁷

The July bill for amendment of JSA also envisaged additional provisions in Article 217 of the law, aimed at **restricting the possibility to finance professional organisations of the magistrates: judges, prosecutors and investigators, as well as of the court staff**. The sources of their property, according to the new Paragraph 3, are limited only to membership dues, material contributions and donations from their members. Any other financing or offering property in any form is prohibited. According to the additional text in Article 195, Paragraph 1, item 4 of the law, the judges, the prosecutors and the

⁶⁵ Bulgarian Helsinki Committee, *Human Rights in Bulgaria in 2016* (2017), p. 143.

⁶⁶ Bulgarian Helsinki Committee, 2017 Annual report, p.27.

⁶⁷ Bulgarian Helsinki Committee, 2017 Annual report, p.30.

investigators may participate in research and teaching activities, but not when they are “financed exclusively by a foreign state or by a foreign person.” These restrictive additions to the JSA were subjected to **sharp criticism immediately after they were submitted in the beginning of July**. On 7 July, 17 NGOs addressed the Speaker of the National Assembly, the chairpersons of the parliamentary groups and the Chairman of the Committee on Legal Affairs, qualifying the restrictions as unjustified, and the unclear motives to them as entirely inconsistent. If they had been adopted, they undoubtedly would have limited the right to association of the magistrates on discrimination grounds, weakening their organisations and as a result they would have stifled the voice of these professional communities in public space. Subsequently similar criticisms of the bill also came from a number of other local and international organisations. In the long run, that part of the bill was not passed by the National Assembly. However, a provision was adopted, according to which judges, prosecutors and investigators may not participate in the managing and control bodies of organisations that are different from ones created for protection of their professional interests, and whose individual members they are. In this way, they may not participate, e.g., in the managing bodies of the Union of Bulgarian Jurists, or in the managing bodies of international organisations of magistrates. The provision in § 7 of the adopted law is also restrictive as it introduces an obligation to declare within one month of its coming into force membership of the magistrates in any non-profit organisations before the Supreme Judicial Council.⁶⁸

RECOMMENDATIONS

The Bulgarian Helsinki Committee makes the following recommendations regarding the compliance of the legislation, judicial and administrative practice in Bulgaria with the standards of the Covenant. The recommendations below are by no means exhaustive. They focus on the most important and urgent problems, which need to be addressed with priority.

1. Bulgaria should improve its legislative framework for providing in law for enhanced punishment of all types of **biased-motivated violent acts**. Hate crime legislation should include also other grounds, in addition to nationality, race, ethnic belonging and religion. Measures should be adopted to prevent, identify, and punish manifestation of bias among law enforcement officials.
2. Bulgarian law enforcement authorities should take seriously investigating and prosecuting of **public incitement** to hatred, discrimination and violence against vulnerable groups. They should speak out against discrimination and promote tolerance toward minorities and vulnerable groups.
3. Step should be taken for further **reform of the Bulgarian judiciary**, including the Constitutional Court, in order to make it fully independent from the other branches of government and to strengthen its integrity.
4. Bulgarian law enforcement authorities should investigate vigorously and punish appropriately **assaults and desecration of mosques and other places of worship**.

⁶⁸ Bulgarian Helsinki Committee, 2017 Annual report, p.30.

5. Bulgaria should adopt comprehensive legislative and administrative framework for ensuring **gender equality** in practice. It should monitor discrimination against women on a systematic basis and should adopt effective measures to combat it in all spheres of social life.
6. Bulgaria should take legislative, judicial and administrative measures for combating **violence against women and domestic violence**. Legislative reforms should be undertaken to introduce the concept and to deal effectively through criminal law and administrative measures with gender-based violence, which is widespread and affects predominantly women and girls.
7. Bulgaria should adopt comprehensive legislative and administrative measures for ensuring equality before the law and **non-discrimination of LGBTI persons**, including equal access to the institution of marriage, providing for a recognition of same-sex unions, change of one's legal gender and protection against hate crimes.
8. Bulgaria should implement a comprehensive reform to ensure non-discrimination of **persons with disabilities**. It should step up its deinstitutionalization efforts with the aim of total abolition of institutional long-term care for persons with disabilities. Measures should be taken to reform the outdated system of guardianship and for ensuring their integration in society, including through offering viable and decent employment opportunities.
9. **Conditions and treatment of residents in institutions** for persons with disabilities should be improved. They should never and in no way be subjected to inhuman and degrading treatment and punishment, as well as to any other violations of their human rights.
10. All **children with disabilities** should be offered education, rehabilitation and other services in integrated environments and the institutions for placement of children for the purposes of long-term care should be abolished.
11. Bulgaria should adopt a **definition of torture** that is in full compliance with articles 1 and 4 of the *Convention against Torture*, and with article 7 of the Covenant.
12. Bulgaria should adopt comprehensive legal, judicial and administrative reform in order to **prevent and punish torture and other ill-treatment** by law enforcement officials. All such incidents should be subject to prompt, independent and effective investigation and the perpetrators should be punished with serious sanctions. Investigation should be subject to independent oversight and guidance.
13. Bulgaria should ensure in law as well as in practice that all persons detained for having committed criminal offences, including those detained administratively under the Ministry of Interior Act, should be informed about their rights, including the **right to remain silent**, and should be provided immediately with an effective **access to a lawyer**. The system of legal aid should be extended to cover effectively police detention.
14. Bulgaria should continue to improve **material conditions of detention** in the prisons and in the investigation detention facilities. Special consideration should be given to the conditions of the prisoners in high security wards and of those undergoing disciplinary punishments of solitary confinement.
15. **Life imprisonment without the possibility of parole** should be abolished from the Bulgarian criminal justice system
16. The **preventive remedy against inhuman and degrading treatment** in the prisons and in the investigation detention facilities should be improved. Administrative courts should react faster to the complaints by the prisoners and should offer effective relief in cases of inhuman

and degrading treatment. Such a remedy should be introduced for all other forms of detention.

17. Bulgaria should step up its efforts to **combating human trafficking**, especially that which involves minor girls. Shelters for victims should offer appropriate services and should not amount to deprivation of liberty. Education should be ensured to all persons placed in crisis centers for children without regard to the duration of the placement.
18. All **asylum seekers** should be offered adequate access to the procedure, decent accommodation, appropriate social services, especially for unaccompanied minors, and programs for integration of those who receive refugee or humanitarian status. They should be protected against physical abuse from public officials and from private individuals and groups.
19. Bulgaria should reform its legislative framework and practice on **forced evictions** and should introduce requirements of necessity and proportionality in order to ensure that the specific conditions of persons evicted from their only homes is taken into consideration. No person should be rendered homeless as a result of a forced eviction without regard to the specific circumstances of the case. Forced evictions should never be used for punishment and with discriminatory purposes against Roma.
20. Bulgaria should reform its **juvenile justice legislation and practice**. It should introduce due process guarantees in indicating correctional measures, periodic review of their effectiveness and should ensure that minors below 14 years of age are treated entirely in the framework of the child protection system. Indication of correctional measures should be preceded by a multi-disciplinary and comprehensive personal assessment of the juveniles.
21. Bulgaria should ensure the right to **freedom of association through registration** of the associations of the Macedonian and other ethnic minorities.
22. Bulgaria should reform its legislative framework and practice in order to ensure **equal treatment of religious communities**. Dissident groups inside established religious communities should be allowed to register and to practice their religion without impediments. Restrictive ordinances discriminating against religious minorities at the municipal level should be repealed.