

# HUMAN RIGHTS IN BULGARIA IN 2019 (SUMMARY)



BULGARIAN  
HELSINKI  
COMMITTEE

## **Human Rights in Bulgaria in 2019 (summary)**

The Bulgarian Helsinki Committee is an independent non-governmental organisation for the protection of human rights. It was founded on 14 July 1992.

The present publication is a summary of the full report that is published only in Bulgarian language. The report was produced as a result of monitoring activities carried out with the support of the Oak Foundation, the Open Society Foundations, the United Nations High Commissioner for Refugees and the European Union.

The report as well as the summary can be quoted freely upon acknowledgement of the source.

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## **Abbreviations**

BNR	Bulgarian National Radio
BNT	Bulgarian National Television
CESCR	Committee on Economic, Social and Cultural Rights
CPJ	International Committee to Protect Journalists
CPD	Commission for Protection Against Discrimination
CPT	European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GERB	Citizens for European Development of Bulgaria Party
IOM	International Organisation of Migration
MLSP	Ministry of Labour and Social Policy
NFSB	National Front for Salvation of Bulgaria
PADA	Protection Against Discrimination Act
SANS	State Agency for National Security
SAR	State Agency for Refugees
UBJ	Union of Bulgarian Judges
VMRO-BND	Internal Macedonian Revolutionary Organisation – Bulgarian National Movement

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## 1. Political Developments in Bulgaria in 2019

Throughout 2019, Bulgaria was ruled by the coalition government of the pro-European centre-right political party Citizens for European Development of Bulgaria (GERB) and the United Patriots, formed after the March 2017 elections. The latter are a coalition of three small extreme nationalist neo-totalitarian parties - Ataka, the National Front for Salvation of Bulgaria (NFSB) and the Internal Macedonian Revolutionary Organisation – Bulgarian National Movement (VMRO-BND). These parties have at various times in the past incited to hatred, discrimination and/or violence against Roma, Muslims, migrants and the LGBTI communities.

European Parliament elections were held on 26 May and local elections – between 27 October and 3 November. The elections took place in a media environment that generally favoured the candidates of the ruling coalition. In the run-up to the elections, the ruling party voted to reduce the subsidies to political parties, thus greatly limiting the opportunities of the opposition for political campaigning. Many major media outlets became open propaganda mouthpieces for the government. In both elections, the ruling GERB party received the most votes. Both the European Parliament elections and especially the local elections were marked by sporadic anti-minority and homophobic propaganda. Two of the pro-government candidates for mayor of Sofia put the demands for a ban on Sofia Pride at the centre of their campaigns. Candidates who before the local elections emerged as outspoken anti-minority instigators and accomplices in discriminatory actions against Roma, were re-elected for new seats by a large majority.

2019 was a year of stagnation and in some respects of regress in human rights. The most serious regress took place in the areas of freedom of association and discrimination of ethnic minorities and particularly the Roma. Pro-European NGOs, including the Bulgarian Helsinki Committee (BHC), came under unprecedented pressure from sources close to the government. For the first time since its establishment, the ruling party petitioned the law enforcement agencies to terminate the activities of the BHC. Other NGOs were also subjected to attempts to ban or restrict their activities; others were demonized and stigmatized. The prosecutor's office filed a lawsuit against a registered minority organization for termination at the behest of a ruling party.<sup>1</sup>

In early 2019, anti-Roma riots broke out in several locations across the country over criminal acts that resulted in pogroms and the expulsion of innocent people, including children and elderly people with disabilities, from their homes, and in the case of the largest in recent years organized operation of ethnic cleansing in the village of Voyvodinovo, near Plovdiv - from the village itself. As a rule, the instigators of these actions came from nationalist political circles, and in the case of Voyvodinovo - the Deputy Prime Minister from the United Patriots himself, Krassimir Karakachanov. The prosecutor's office, as in previous years, failed to investigate and prosecute the perpetrators and instigators of these acts of violence.

A new Prosecutor General was elected in 2019. The election took place in the context of restrictive legislation that severely limits the circle of persons who are eligible to nominate

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<sup>1</sup> See below, *Chapter 8. Freedom of Association*.

candidates for the post. In practice, there was no choice, as there was only one candidate for the position — the former Deputy Prosecutor General and head of the Specialized Prosecutor's Office, Ivan Geshev. His name was put forward by prosecutors close to the ruling party, in which former Prosecutor General Tsatsarov took the most active part. The Supreme Judicial Council, which is dominated by the ruling party, ultimately elected him by the required majority in spite of months of civil protests.<sup>2</sup> The protesters were repeatedly described by the candidate and by the pro-governmental propaganda media that supported him as expressing the interests of oligarchic circles that are subject to investigations by the prosecutor's office.<sup>3</sup>

## 2. Cooperation with International and Local Human Rights Organisations

In 2019, Bulgaria's periodic report on the implementation of its obligations under the International Covenant on Economic, Social and Cultural Rights came under review before the UN Committee on Economic, Social and Cultural Rights (CESCR). The review took place on 21-22 February in Geneva, and its recommendations were published on 29 March 2019. They address a number of areas, including fiscal policy, corruption, the situation of the Roma, gender equality, employment and the rights of vulnerable groups, the right to social security, domestic violence, deinstitutionalisation of childcare, right to housing, access to health care, right to education and the cultural rights of minorities.<sup>4</sup> BHC participated in the review by providing an alternative report and through an online conference of the BHC chair with the Committee members immediately before the consideration of the report for Bulgaria. Many of the BHC comments and recommendations were adopted in the Committee's concluding observations and recommendations.

On two occasions during the year, in March and then again in April, Bulgaria was convicted by the European Committee of Social Rights under complaints from two international organisations - the Equal Rights Trust<sup>5</sup> and the European Roma Rights Centre.<sup>6</sup> The first case concerns the suspension or termination of family benefits for children when the child stops attending school (even after they have returned to school) and the termination of family benefits for children when the mother is aged under 18. The Committee found violations of Article 16 and Article F of the European Social Charter (Revised) in relation to two measures - the right to adequate social, legal and economic protection of the family on a discriminatory basis, as the relevant legislation introducing the two measures, disproportionately affects Roma, and in particular Roma minors. In the second case, the Committee found violations of Article 11 § 1 and Article F of the Revised Charter - the right to health protection on a

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<sup>2</sup> See below, *Chapter 4. Independence of the Judiciary and Fair Trial*.

<sup>3</sup> See, for instance, "Prosecutor General Geshev: The 60 or 80 protesters against me are acting under instruction from oligarchs under investigation", <https://trafficnews.bg/obshtestvo/geshev-60-80-dushi-protestirat-sreshtu-men-dirizhirat-gi-160841/>.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Bulgaria*, E/C.12/BGR/CO/6, 29 March 2019.

<sup>5</sup> ECSR, *Equal Rights Trust v. Bulgaria*, Complaint No. 121/2016.

<sup>6</sup> ECSR, *European Roma Rights Center v. Bulgaria*, Complaint No. 151/2017.

discriminatory basis due to inadequate access of Roma women to health care during pregnancy and childbirth.

Bulgaria's implementation of the judgements of the European Court of Human Rights (ECtHR) continued to be problematic in 2019. The number of non-executed judgements under supervision by the Committee of Ministers at the Council of Europe decreased in comparison to 2018. At the end of 2019, they numbered 169. However, the judgements in which supervision was terminated during the year were mostly trivial and the monitoring of some was terminated prematurely (e.g. *Petkov and Profirov*). Those that address serious structural human rights problems continued to be under enhanced supervision. In 2019, the enhanced supervision of none of them was stopped. Some of the cases, such as the *Velikova v. Bulgaria* group, have been under supervision since 2000 and the Bulgarian institutions have stubbornly refused to take the necessary measures towards implementation.

The Council of Europe Commissioner for Human Rights visited Bulgaria in November and met with government institutions, NGOs and victims of human rights violations to discuss a range of issues related to discrimination against minorities, domestic violence and freedom of expression. At the end of her mission, the Commissioner made a statement condemning the spread of hate speech and bias-motivated crimes against Roma, paying special attention to the expulsion of Roma families from the village of Voyvodinovo; called for a re-opening of the discussion of Bulgaria's ratification of the Istanbul Convention and expressed concern over "the continuing deterioration of media freedoms in Bulgaria".<sup>7</sup>

In July, the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT) published the report from its 2018 visit on the treatment and conditions of detention of foreign nationals. The Committee made a number of recommendations, mainly on the conditions of detention in the centres for involuntary accommodation of foreigners. The report was published together with the response of the Bulgarian government.<sup>8</sup>

The cooperation of Bulgarian institutions with local human rights organisations deteriorated significantly in 2019. Nationalist parties, part of the government coalition, and the media serving them continued the practice of labelling pro-European NGOs as "Sorosoid", "gender" and serving hostile interests, in stark contrast to their positive attitude to organisations sympathizing with official Russian policy. During the year, groups apparently manipulated by neo-totalitarian nationalist, conservative, anti-European and pro-Kremlin propaganda and pro-governmental circles launched an attack on NGOs that provide social services to vulnerable groups like children and women victims of violence. Pro-European NGOs were accused of instilling values that are alien to Bulgarian society, promoting children's sexual education and their rights, and fighting for the official recognition of same-sex partnerships and LGBTI rights. The pressure led to the rejection in May of the previously developed progressive National Strategy for the Child 2019-2030 by personal order of the Prime

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<sup>7</sup> "Bulgaria should counter harmful narratives endangering human rights and step up efforts to fight hate speech and domestic violence", 2 December 2019, available at: <https://www.coe.int/en/web/commissioner/-/bulgaria-should-counter-harmful-narratives-endangering-human-rights-and-step-up-efforts-to-fight-hate-speech-and-domestic-violence>.

<sup>8</sup> See *Chapter 3. Right to Life, Protection from Torture, Inhuman and Degrading Treatment*.

Minister. In December, parliament postponed the entry into force of the Social Services Act with six months.

In 2019, the BHC came under unprecedented direct pressure for its human rights activities, expressed in open street demonstrations against the organisation and proposals for its termination, which were made by high-ranking politicians from VMRO, a party that is part of the government coalition. Other NGOs and professional organisations were also pressured to curtail their activities and close them down.<sup>9</sup>

In 2019, the Ministry of Health did not respond to the BHC request to renew the agreement for monitoring the state institutions under its authority. The old agreement between the ministry and the organisation was not renewed in 2015 by then-Minister Petar Moskov after the BHC had criticized his racist remarks.

### **3. Right to Life, Protection from Torture, Inhuman and Degrading Treatment**

In 2019, the main problems in relation to the right to life, protection from torture, inhuman and degrading treatment, were the material conditions in prisons and the illegal use of physical force and auxiliary means by the law enforcement authorities. During the year, some improvements were made to the material conditions in prisons and pre-trial detention facilities.<sup>10</sup> The problem with the use of force by law enforcement agencies, and in particular by the police during and in the first hours of detention of suspected criminals, however, deteriorated. The prosecution continued to not investigate these crimes even when they constituted torture.

#### **Racist Attacks against Roma**

In 2019, Roma from different parts of the country were targeted in racist attacks, as a result of which hundreds of people, including children, elderly and people with disabilities, were evicted from their homes, some of them forever. Such were the cases of expulsions of Roma from the village of Voyvodinovo in January and from the town of Gabrovo in April, accompanied by property damage, arson and threats of violence.<sup>11</sup> On April 28, after an argument with a Bulgarian family, a large group of Roma were detained in the village of Kuklen and subsequently brutally beaten at a police station in Plovdiv. According to the testimonies of victims and witnesses, they were threatened with execution and beaten with fists and bats during their arrest and on their way to the police station. Immediately after being taken inside the detention facility, they were handcuffed, beaten with batons and insulted with racist insults. Some were forced to drink water from the floor with their hands tied.<sup>12</sup> By the end of the year, no charges had been filed against the law enforcement officers who had exercised the violence.

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<sup>9</sup> See below, *Chapter 8. Freedom of Association*.

<sup>10</sup> See below, *Chapter 9. Conditions in Places of Detention*.

<sup>11</sup> See below, *Chapter 5. Right to Protection of Personal and Family Life, Home and the Correspondence*.

<sup>12</sup> "Roma Detained in Kuklen: We were beaten with bats and sworn at", *Maritsa* daily, 30 April 2019, available at: <https://www.marica.bg/region/kuklen/zadrjanite-romi-v-kuklen-biha-ni-s-buhalki-i-psuvni>.



## Excessive Use of Force by Law Enforcement Officials

BHC conducted a survey in early 2019 among prisoners from the prisons in Stara Zagora, Vratsa, Lovech and Pazarjik whose pre-trial proceedings had started after 1 January 2018. In previous years, BHC had conducted similar surveys in the same prisons and among similar groups of prisoners. The survey results are given in Table 1 below.

**Table 1.** *Percentage of respondents reporting use of force against them by law enforcement officials*

	2010	2011	2012	2013	2014	2017	2018	2019
<i>During arrest</i>	26.2	27.1	24.6	22	23	25	15.5	26.1
<i>Inside the police station</i>	17.4	25.5	18	23.3	22.4	18	21.6	20.8

On the whole, the results reveal an increase in allegations of use of physical force, especially during arrest. In this respect, the proportion of prisoners complaining about such practices is comparable to pre-2012 levels, which were years of unbridled police arbitrariness. During the surveys in the prison in Pazarjik, BHC monitors came across cases of torture in custody by hitting the foot soles with a hard object in order to extract testimony and for punishment (the so called "*falaka*"). The complaints were received from different individuals, who were interviewed independently of one another and who provided similar descriptions of these practices: inside the police station several police officers knock down to the ground the detainee and handcuff him with hands behind his back. One of the policemen then steps on his back, the others strip him and start beating him with a hard object on the bare feet, which are lifted up. Most often, the goal of this torture is to extract a confession and to point to physical evidence (for example, hidden stolen items). Sometimes, however, the beating continues even after a confession is made as punishment. After getting back on his feet, which is extremely painful, the beating sometimes continues on the palms of the hands. In one case, the detainee defecated involuntary as a result of the beating.

Ill-treatment of victims and detainees in pre-trial detention facilities and in prisons continued with impunity. In May 2019, the prosecutor's office published its 2018 activity report. According to it, during the year the prosecution had monitored a total of 200 cases of ill-treatment by law enforcement officials, which is 19% more than 2017; of them 164 were newly-formed (27% increase in comparison to 2017). The pre-trial proceedings in 2018 were 101, 40% more than in 2017, of which 57 newly-formed, 42% more than in 2017. However, only two prosecutorial acts were brought to court against four persons - one indictment and one proposal for release from criminal liability with imposition of an administrative penalty.<sup>13</sup>

The impunity in the use of force by prison staff is similar. In 2018, the prosecutor's office monitored a total of 69 files and eight pre-trial proceedings. Of these, only one indictment was

<sup>13</sup> Prosecutor's Office of the Republic of Bulgaria (2019). *Report on Law Enforcement and on the Activities of the Prosecution in 2018*, May 2019, p. 67, available at: [https://www.prb.bg/bg/pub\\_info/dokladi-i-analizi](https://www.prb.bg/bg/pub_info/dokladi-i-analizi) (in Bulgarian).

brought to court in relation to two individuals.<sup>14</sup> The prosecutor's office report does not contain data on the outcome of the proceedings after the filing of the indictments. It is unclear whether the few law enforcement officials and prison staff were convicted at all and the type of punishments they received. Given the impunity enjoyed by the Bulgarian police, it is not surprising that the vast majority of respondents in the BHC survey who report such violence say they have not filed complaints about it, because they consider it pointless.

### **CPT Report on the Treatment and Conditions of Detention of Foreign Nationals**

In July, the European Committee for the Prevention of Torture published its report on its December 2018 visit to Bulgaria,<sup>15</sup> together with the response of the Bulgarian government. The report focused on the treatment and conditions of detention of foreign nationals. The CPT noted an improvement over previous visits to material conditions and the treatment of detainees at Border Police detention facilities, as well as a satisfactory system of access to legal aid, medical assistance and information on rights. The Committee also noted the improvement of material conditions in the two special homes for temporary accommodation of foreigners at Busmantsi and Lyubimets, mainly due to the fact that both establishments were operating well below their official capacities.

At the same time, the CPT noted a number of problems. Of particular concern is the lack of toilets in most of the common areas at Busmantsi and Lyubimets. In these homes, the lack of toilets obliged the detainees to use buckets at night or comply with their needs of nature through the windows. Another serious problem is the lack of meaningful activities to engage the residents throughout the detention period, which can last for many months. In both homes, the CPT found deficits in the health care of the detainees. These include lack of modern medical equipment, the use of medicines past their expiry date, perfunctory examination upon admission and a virtually non-existent recording of injuries both during admission and during detention. A particular concern was the poor access to psychiatric care, which in both homes is limited to emergencies.

Among the other problems identified by the CPT are the lack of a fair procedure for accommodation in the closed centre at the State Agency for Refugees (SAR), which is part of the Busmantsi institution; restrictive conditions for visits to special homes, including the inability to use VoIP (Voice over Internet Protocol) technology to keep in touch with detainees' families, as well as the arbitrary exercise of disciplinary authority in the event of breaches of internal order.

In its response, the Bulgarian government acknowledged and accepted some of the recommendations, mainly those related to the material conditions of detention in the Busmantsi and Lyubimets homes and to the food. It announced ongoing repairs, delivery of equipment and the conclusion of a new contract for the supply of food in both homes. New TVs, computer configurations and sports equipment were also reported to be available. As for

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<sup>14</sup> *Ibid.*, p. 66.

<sup>15</sup> CPT (2019). *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 10 to 17 December 2018*, Strasbourg, 11 July 2019, available at: <https://rm.coe.int/1680966286>.

the serious problem with health care, it is clear from the government's response that improvements were minimal, especially with regard to access to qualified medical staff. At the same time, some of the recommendations were rejected and the government refused to take any measures to implement them. This is the case, for example, with the recommendation to transfer the medical staff under the jurisdiction of the Ministry of Health. In another case, regarding the recommendation to the Bulgarian authorities to provide opportunities for unsupervised visits for detainees, the government replied: "The recommendation is incompatible with the established measures for security and organisation of the premises for outsiders on Interior Ministry grounds".<sup>16</sup> Some of the CPT recommendations remained unanswered.

#### **4. Independence of the Judiciary and Fair Trial**

In the spring of 2019, a media investigation, known as "Apartmentgate", revealed transactions for the acquisition of real estate property at prices significantly below market prices by persons holding senior state and party positions, including then Minister of Justice, Tsetska Tsacheva. As a result, she resigned. Despite the initiated inspections, however, no conflict of interest was found in relation to any of the persons involved.

Danail Kirilov was appointed Minister of Justice. He proposed amendments to the law to regulate the investigation of crimes committed by the Prosecutor General. The draft law was criticized by the Department for the Execution of Judgments of ECtHR of Committee of Ministers and by the Venice Commission, both of which argued that it did not achieve the declared goal. The Committee of Ministers adopted an interim resolution in the context of supervision of the implementation of the case *Kolevi and S.Z. v. Bulgaria*, noting that "the draft bill [...] not only fails to resolve the current shortcomings relating to the independence and effectiveness of investigation concerning a Prosecutor General, but could make such an investigation more difficult to initiate". Kirilov subsequently proposed the figure of an "independent" prosecutor, the only one with the authority to investigate the Prosecutor General. The proposals have been criticized as "unconstitutional".

A draft bill amending the Judiciary Act was submitted, proposing a number of amendments, including for magistrates to be exempt from liability under the Protection against Discrimination Act if the violation was committed in connection with the performance of their official duties. During the discussion, a number of proposals were made, including a ban on funding magistrates' organizations with funds from abroad, the main motive being "to prevent foreign interference and to strengthen the independence of magistrates". There was a proposal for amendment of Article 213 of the Code of Criminal Procedure, the adoption of which would make it possible for victims or their relatives to appeal in court any denials to initiate pre-trial proceedings, as a way to limit the prerequisites for arbitrariness and protect the interests of victims of crime.

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<sup>16</sup> *Response of the Bulgarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Bulgaria from 10 to 17 December 2018*, Strasbourg, 11 July 2019, p. 18, available at: <https://rm.coe.int/1680966288>.

The EC also announced its report on Bulgaria's progress under the Cooperation and Verification Mechanism. Following the abolition of this mechanism, which was intended as a temporary measure but lasted 13 years (it can be abolished only with the approval of both the European Parliament and the European Council), the functions of monitoring and reporting on the country's progress in finalizing the requirements for the independence of the judiciary and effective fight against corruption will be carried out by the Coordination and Cooperation Council, composed of the chairmen of the Supreme Court of Cassation, the Supreme Administrative Court and the Commission for Combating Corruption and for Confiscation of Illegally Acquired Property, the Prosecutor General, the Inspector General at the Inspectorate to the Supreme Judicial Council, the Minister of Interior and the Minister of Finance.

A new Prosecutor General was also elected. As expected, the Supreme Judicial Council's prosecutorial board unanimously nominated Ivan Geshev, until then Deputy Prosecutor General, as a candidate for the post. The Minister of Justice, as the only other person who could nominate a candidate, refused to do so. Despite protests over non-compliance with the procedure and the president's refusal to sign the decree appointing Ivan Geshev and returning his candidacy to the Supreme Judicial Council, Geshev was twice elected by 20 votes to four. During the break in the Supreme Judicial Council session for a second vote, Judge Atanaska Disheva, who had voted against Ivan Geshev during both votes, announced that Ivan Geshev had uttered words as a threat to her.

Other judges also came under attack during the year, including Lozan Panov, chairman of the Supreme Court of Cassation and member of the Supreme Judicial Council. In an interview, the Prime Minister said that he allegedly "helped" Lozan Panov's election to the post, while during the Supreme Judicial Council session for the election of Ivan Geshev, the acting Prosecutor General Tsatsarov hinted that the election of the Supreme Court of Cassation chairman had taken place "in two other buildings". There were also attacks by MP Georgi Markov, who stated from the rostrum of the National Assembly during the debates on the election of the chair of the Commission for Combating Corruption and for Confiscation of Illegally Acquired Property, that the Supreme Court of Cassation is turning into a political party, and it is unclear whether it was working in the interests of Bulgaria, after which he turned to Panov: "Who do you think you are, man? You are depoliticized, come down a peg or two".

There was a fierce attack on the independence of the three-member panel of judges of the Sofia Court of Appeals, which ruled on the parole of Australian citizen Jock Palfreeman. The Judicial Board of the Supreme Judicial Council did not protect the judges, but in turn approached the Inspectorate to the Supreme Judicial Council to check their integrity. The spokesperson for Prosecutor General Tsatsarov expressed a similar view. This led to an unprecedented statement by 292 judges calling on politicians to stop attacking the judiciary and insulting the court. The next day, amid protests and calls for protesters to take matters into their own hands and a series of verbal attacks on the panel, the judge's panel of the Supreme Judicial Council called for respect for judicial independence.

Also worth noting is the request of the former Prosecutor General Tsatsarov to the Supreme Court of Cassation to resume the criminal proceedings before the Supreme Administrative Court for the conditional early release of Jock Palfreeman. This action caused considerable

controversy among lawyers, as procedural laws do not allow the resumption of such proceedings, and many questioned why at the very end of his term Tsatsarov took action that is legally inadmissible.

After the resignation of the previous chair of Commission for Combating Corruption and for Confiscation of Illegally Acquired Property due to his participation in *Apartmentgate*, a new chairman had to be elected within two months. This did not happen until former Prosecutor General Tsatsarov decided at the last minute to vacate his post shortly before the end of his term. Several NGOs announced that they were boycotting the election and refusing to send questions to the candidates because they did not want to legitimize a corrupt procedure - although in addition to Tsatsarov's candidacy, a second one was raised, albeit formalistic. As expected, parliament elected Tsatsarov to the post chairman of the Commission for Combating Corruption and for Confiscation of Illegally Acquired Property.

In 2019, the ECtHR issued four judgments finding violations of Article 6 of the European Convention on Human Rights (right to a fair trial). These are the cases of *Mustafa v. Bulgaria* (application № 1230/17), *Lolov and Others v. Bulgaria* (application № 6123/11), *Maslarova v. Bulgaria* (application № 26966/10) and *Valkova v. Bulgaria* (application № 48149/09).

## 5. Right to Respect for Private and Family Life, Home and the Correspondence

### Special Surveillance Means

In May 2019, the National Bureau for Control of Special Surveillance Means published its 2018 report.<sup>17</sup> According to the report, in 2018 special surveillance means had been applied with respect to 3,046 individuals. The number of requests for use of such means was 6,099, the court issued 5,328 permits and 771 refusals. In 2018, the procedures for requesting and using special surveillance means marked a 9.5% increase in comparison to 2017. As a result of the applied special surveillance means, 1,714 items of physical evidence were prepared.<sup>18</sup>

The largest number of requests for the use of special surveillance means came from the Ministry of Interior (61%) and the Prosecutor's Office (34%). There was a drop in the requests coming from the State Agency for National Security – 4.8% in 2018 compared to 6.4% in 2017; their total decrease for 2014-2018 was six-fold. The most frequent requests for the use of special surveillance means were connected with organized criminal groups (2,741), drugs (736), excise goods (321), fraud (223), theft (163) and bribery (154). Compared to the previous two years, there is a 25% increase in the use of special surveillance means for the detection of organized criminal groups.<sup>19</sup>

In 2018, 5,328 permits for use of special surveillance means were issued (3,909 for initial requests and 1,419 for extension of the term), marking a 15% increase compared to 2017.

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<sup>17</sup> *Report of the National Bureau for Control of Special Surveillance Means for 2018*, available at: <https://www.nbksrs.bg/images/doc/Doc3.pdf>.

<sup>18</sup> *Ibid.*, p. 5.

<sup>19</sup> *Ibid.*, p. 12.

Most were issued by the Specialized Criminal Court (2,542), followed by the regional courts in Plovdiv (333), Stara Zagora (258), Sofia City Court (190) and Blagoevgrad (139). In 2018, 24 applications of special surveillance means were authorised at the request of the Prosecutor General and five – at the request of the Supreme Prosecution Office. The Appellate Specialized Criminal Court authorized 32 applications of surveillance means with respect to 24 individuals.

In 2018, refusals were issued in 771 cases – half of the refusals issued in 2017 and 2016, when the Specialized Criminal Court issued refusals in almost 58% of requests. Most refusals were issued on requests submitted by the State Agency for National Security (18.7% of all Agency requests), followed by the Interior Ministry (13.4%) and prosecutor's offices (11.7%). The main reasons for the refusals are: "Lack of/insufficient data on the person's involvement in the described criminal activity, lack of data on the existence of an organized criminal group, lack of reasons for impossibility or extreme difficulties in collecting the necessary data without the use of special surveillance means, failure to indicate the results achieved in the requests for extension of the implementation period".<sup>20</sup>

As a result of the use of special surveillance means, 1,714 pieces of physical evidence were prepared - a 2.6%-increase compared to 2017. The ratio between the units of prepared evidence and the number of persons with temporarily restricted fundamental rights as a result of the use of such means is 56.3%.<sup>21</sup>

In 2018, 115 files were opened at the Bureau for checks of legality in the use of special surveillance means, of which 106 were started on signals from individuals and five were self-referrals. The Bureau did not find wrongful use of surveillance means in any of the cases.<sup>22</sup>

On 3 August 2018, the first decision of the Supreme Court of Cassation was issued in a case filed by an individual under Article 2 § 1, item 7 of the State and Municipalities Responsibility for Damages Act, formed after the applicant was informed by the National Bureau that surveillance means had been used against him illegally. In this specific case, the application of the surveillance means was permitted for an act which, at the time of the surveillance, had been decriminalized. The court confirmed the opinion of the National Bureau and awarded 2,000 EUR in compensation for non-pecuniary damages.

For 2018, the Bureau concluded that the heads of the bodies empowered to request use of special surveillance means should motivate in greater detail the need to apply them and should raise the administrative capacity of the staff engaged with drafting the requests. More general and legislative measures are needed to synchronize the provisions of the Special Intelligence Means Act and the Code of Criminal Procedure in view of the procedure and term for destruction of information obtained through special surveillance means and not used for the preparation of material evidence; to envisage the procedure, term and conditions for destruction of material evidence, which was used in the criminal process; to eliminate the textual reproduction of the information obtained through surveillance means in the pre-trial

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<sup>20</sup> *Ibid.*, p. 16.

<sup>21</sup> *Ibid.*, p. 18.

<sup>22</sup> *Ibid.*, p. 20.

proceedings and to introduce a unified information system for the bodies authorized to request the use of surveillance means regarding persons to whom they are applied.<sup>23</sup>

### **Forced Evictions of Roma**

The situation with regard to forced evictions of Roma from their only homes continued to be a serious problem in Bulgaria. It deteriorated in practice, part of the deterioration resulting from racist instigation coming from or finding support among the extreme nationalists who have been part of the government since 2017. In September 2017, in the context of the supervision on the implementation of the ECtHR judgements, the Committee of Ministers of the Council of Europe expressed its regret that for yet another year the Bulgarian authorities had failed to take actions to submit amendments to the State Property Act (SPA), Municipal Property Act (MPA) and Spatial Planning Act (SpPA), which would guarantee proportionality of the actions aimed at coping with the illegal possession of public property and the orders for illegal buildings to be demolished. The Committee invited the State to submit information on what had been done and an action plan for the adoption of the required legislative reform by 1 February 2018.<sup>24</sup> Although in 2016 in a report of the Minister of Justice on the implementation of the judgements from the *Yordanova v. Bulgaria* group it is stated that in connection with the convictions “it is necessary to consider the explicit introducing” of the principle of proportionality in the demolition of illegal buildings under Articles 195, 225 and 225a of SpPA, Article 80 of SPA and Articles 46 and 65 of MPA in the cases affecting the right to respect for one’s personal and family life and home under Article 8 of ECHR,<sup>25</sup> no actions in that direction were undertaken in 2017-2019.

### **The Voyvodinovo Case**

In perhaps one of the most serious human rights violations of the past decade, in January 2019 more than 100 Roma were expelled from their homes in the village of Voyvodinovo, near Plovdiv. The expulsion followed a criminal incident that occurred on 6 January 2019, in which a 33-year-old special forces commando was injured during a fight with two Roma men on the street in Voyvodinovo. The two men were immediately detained, charged and were sentenced to various terms of suspended prison sentences in early April 2019. The incident, however, spurred anger among the local Bulgarian population. A crowd gathered for a protest in the evening on the day of the incident in the village centre. Radical racist groups from Plovdiv joined the protests. As protesters walked the streets chanting anti-Roma slogans, the police and gendarmerie arrived to secure public order.

At around 10 pm, the village mayor went to the Roma neighbourhood and told all Roma to leave the village. Several people called taxis or relatives from nearby Plovdiv and left in a panic. Those who could not leave, hid in their houses until they managed to leave the next day. Altogether, about 100 Roma left Voyvodinovo, including pregnant women, children,

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<sup>23</sup> *Ibid.*, p. 22.

<sup>24</sup> [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22004-1924%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-1924%22]})

<sup>25</sup> Ministry of Justice (2016). *Fourth Annual Report of the Minister of Justice on the Implementation of the Judgements of the European Court of Human Rights on Cases against the Republic of Bulgaria in 2016*, p. 24, available at: <http://www.justice.government.bg/Files/4-ti-Obobshten-doclad-636425381305499510.pdf>

elderly people and people with disabilities. They found temporary shelter with relatives, friends, in barracks and abandoned buildings in Plovdiv, in settlements near Plovdiv, and in other cities. Many, including children, were forced to sleep on the floor in unheated rooms in the mid-winter. In the panic of leaving, many Roma residents of Voyvodinovo left behind personal belongings and documents.

In the days that followed, the protests in Voyvodinovo continued with explicit calls for the permanent expulsion of all Roma from the village and the destruction of their homes. Two days after the incident, on 8 January, the Deputy Prime Minister of Bulgaria, Krassimir Karakachanov of the VMRO nationalist party, visited the village. There he ordered the immediate "cleansing" of the illegal constructions in Voyvodinovo and stated: "The Gypsies in Bulgaria have become extremely arrogant and the tolerance of Bulgarian society has run out". In the next two days, the Mayor of the Municipality of Maritza issued four orders declaring 15 buildings in the Roma neighbourhood of Voyvodinovo to be "self-destructing" and hazardous for living and were immediately destroyed. Among them were the three single dwellings of the relatives of the two Roma accused of the crime against the commando. The electric power and water supply of all other buildings were cut off.

On 11 January 2019, a large rally involving acting and reserve military officers took place in Voyvodinovo in support of the injured commando. Anti-Roma slogans were chanted again. Over the next couple of days, residents of Voyvodinovo and soccer fans continued to gather each evening for anti-Roma protests.

On 16 January 2019, the Mayor of the Municipality of Maritza issued 17 orders for the removal of all residential buildings in the Roma neighbourhood of Voyvodinovo. They were worded in a similar manner and declared that the buildings were illegal, could not be tolerated within the meaning of the Spatial Planning Act and should be removed. The applicants found the removal orders glued to the building of Maritza Municipality, located in Plovdiv, and on the Internet, where the municipality published them. They applied to the Bulgarian Helsinki Committee for legal assistance. All 17 orders were appealed before the Plovdiv Administrative Court. The Plovdiv Administrative Court upheld the orders of the Mayor. Several of the Plovdiv Administrative Court decisions were upheld by the Supreme Administrative Court.

At the end of January 2019, several families decided to return to their abandoned houses. On 1 February 2019, 34 Roma petitioned the Director of the Plovdiv Regional Directorate of the Ministry of Interior, stating their intention to return to the village and asking the police to ensure the safety of their children. On 9 February 2019, some 30 Voyvodinovo residents rented cars and taxis and arrived at the village in the morning. Upon entry they were met by police officers who told them that they could not enter their homes as they were illegal and dangerous. The village mayor also arrived and told them that he banned them from entering their homes. When asked about the legal basis of this ban, the mayor stated that he was not interested in the law and that Bulgarians from the village did not want any Roma in their village. Meanwhile, more police and gendarmerie arrived. A group of protesters from the village began to gather around the church and advanced to the Roma neighbourhood, chanting threats. Police and gendarmerie encircled the two groups to prevent a clash. After several hours of intense negotiations, the Roma were put on a bus by the mayor and he



personally drove them to one of the Roma neighbourhoods of Plovdiv. On 11 February 2019, the mayor of Voyvodinovo said on the national bTV television: "The position of the village is clear - there is no coming back". The applicants found themselves on the street again, forced to rely on relatives and friends for shelter. Seventeen of them submitted applications to the Municipality of Maritza for council housing, but the municipality responded it did not have any housing to offer. On two occasions in mid-February 2019 the Mayor of the Municipality of Maritza sent letters to the Plovdiv District Governor, informing him that the Municipality of Maritza did not have any possibility to provide housing to any persons on its territory without shelter and asked him to take action. On 7 March 2019, the District Governor responded that he was unable to provide any housing to the evicted Roma and that this was legally within the competence of the municipalities.

Several victims of the forced evictions applied to the administrative courts asking for urgent action against the prohibition of the mayor of Voyvodinovo and the police to allow them back into their homes. The courts rejected their appeals arguing that they could not interfere after the impugned acts of obstruction had been terminated.

After the exhaustion of the domestic remedies, on 1 April 2019, 56 Roma from Voyvodinovo applied for interim measures to the European Court of Human Rights. On 24 April 2019, the Court granted interim measures to 16 applicants, most of them children. It also prioritized the application and communicated it to the government. At present, the case is pending before the Court. According to the interim measures, the government of Bulgaria had to provide immediate accommodation to the 16 applicants and to immediately consider all pending applications for accommodation before the Maritza Municipality. None of these measures were implemented. Nearly two years after the evictions, all Roma continue to live, as they had in January 2019, in rooms or barracks that are overcrowded, unhygienic, often without access to basic municipal services. Some of them lost their jobs after being forced to leave Voyvodinovo.

### **The Gabrovo Case**

In April 2019, anti-Roma protests broke out in the city of Gabrovo in North Bulgaria. They were triggered by a fight that broke out between ethnic Bulgarians and Roma in a shop on 7 April. CCTV footage showed three Roma attacking and beating a shop assistant. The video was widely circulated on social media. The Roma who assaulted the shop assistant were arrested, but were released 24 hours later. This unleashed outrage among the Bulgarian residents in Gabrovo and in the next several days some 2,000 protesters went out on the streets marching and shouting anti-Roma slogans. The reaction of the district court in Gabrovo was to remand the three Roma in custody, but in the neighbouring city of Veliko Turnovo.

Heavily-armed police units arrived in Gabrovo, along with the former city mayor and current Deputy Prime Minister Tomislav Donchev. Both he and the other Deputy Prime Minister Krassimir Karakachanov made public anti-Roma statements. Mr Karakachanov publicly stated: "Given the established status of a privileged part of the population of the Gypsy community with respect to other citizens, it is time for the state to put a stop to double standards with respect to the treatment of its own citizens". Tomislav Donchev on his part stated: "People are angry at the perception that some groups in society have more rights than

others and because of the abuse of social payments". These statements encouraged the protesters, who organised arson attacks on Roma houses in Gabrovo and destroyed the property of innocent people.

On 22 and 23 May 2019, representatives of the BHC and the Centre for Dialogue and Interethnic Tolerance Amalipe visited Gabrovo to monitor the consequences of the riots. We met with local Roma victims, with representatives of the local government and the police. The following accounts reveal the situation of several Roma families who became victims of the pogrom.

#### *The family of Minko Lalev*

Monitors visited the home of Minko Lalev, who died several days after the riots broke out from a heart attack. His children, Monyu and Elisaveta, showed us the nearby forest where the family spent the night after escaping from the crowd. They were wearing only T-shirts, socks and slippers in the cold night. They slept on the ground and returned to their home only after the riots subsided.

#### *The pogrom in the home of Siika Asenova and her 12-year-old son*

During the first night of the riots, Siika Asenova and her son managed to escape from their home before the angry crowd broke into their house. The traces of the pogrom were still visible on the day of the monitoring - broken windows covered with nylon, broken furniture, torn cables, broken TV, refrigerator and CD player. Gabrovo municipality, which lets the social housing to the family, refused to change the broken windows. "I saw fear in my son's eyes", reports Siika Asenova. "During the night, just around the house next door, we saw about 15 people throwing bricks, slabs and stones at the windows. We escaped when they broke the outside door and stormed the house". Siika Asenova was diagnosed with cancer in 2009 and has had surgery several times. She raises her son on her own. The two have lived in Gabrovo for four years.

#### *Sonia Gateva and her six children*

Many months after the riots, Sonia Gateva, 27, and her six children are still living without a safe home. BHC and Amalipe found the family in a room measuring 3 m x 4 m on the second floor of an old house in Gabrovo. A steep, narrow, rotten wooden staircase leads to the family room. There was no running water in the room. The toilet was in the yard. The small children use a plastic bucket covered with a lid instead of a toilet, a meter away from the entrance. On the day of the visit, the bucket was overflowing, some of the contents were spilled, the space around was filled with flies.

During the pogrom, Sonia, who was pregnant, and her six children fled Gabrovo. Their home was destroyed. For a short time afterwards, they were sheltered in a monastery in the Montana district, where they were given 4 loaves of bread and a few cans of food a day. Upon their return to Gabrovo, they were allowed to live with an elderly man with a severe physical disability, whom Sonia assists. The entire family lives on a monthly income of 360 BGN (180 EUR). The children's father, Asen Alexandrov, works in the municipal enterprise "Public

Works". Sonia, who has a physical disability, has undergone surgery as a result of a past head trauma. Her children do not attend day-care or go to school.

#### *The burned down house of Krassimir Mitev*

The house was located on 12 Batak Street in the Roma neighbourhood of Gabrovo. On the day of the visit, only two dilapidated walls and several burnt beams remained from Krassimir Mitev's house. Everything was burned in the fire that was caused by an arson attack. Relatives sheltered Krassimir Mitev and his partner in a barrack with no running water or toilet. They use water and an outside toilet in a neighbour's yard.

#### *The destruction of Vassil Ivanov's home*

Vasil Ivanov and his granddaughter showed the monitoring team the premises of the family home which the uninvited guests had invaded during the protests. The railing of the staircase to the second floor was broken with bats – the traces were still visible; much of it was destroyed. Much of the furniture was also destroyed, including cupboards, stove, refrigerator, dishes. During the pogrom the grandmother hid in the toilet. The younger children found a hiding place in a cupboard under a sink on the second floor.

The police and the prosecution in Gabrovo filed no charges in relation to the pogrom in the Roma homes.

## **6. Freedom of Thought, Conscience and Religion**

### **Muslims**

#### **Graffiti on the Walls of the Karlovo Mosque**

On 1 July 2019, offensive inscriptions and swastikas appeared on the walls of the Kurshun Mosque in Karlovo. The Muslim community called on the municipality of Karlovo, which owns the mosque, to take the necessary measures and prevent the desecration of Muslim temples. The case was reported to the local police. In 2013, the Muslim denomination had started court proceedings to restore Muslim community ownership of the mosque. At the time a group of nationalists, led by the municipal mayor, staged protests against the community's request.

#### **Attack on the Chief Mufti's Office in Sofia**

On the evening of 4 July 2019, the building of the Chief Mufti's Office in the capital was the subject of another Islamophobic attack by an unknown person, who smashed the windows on the ground floor of the building with stones. This act of vandalism took place in front of dozens of witnesses and was filmed by security cameras. No one was injured in the accident. The Muslim denomination insists that the case should be investigated as a bias crime, not just as an act of hooliganism.

## **Declaration of the Supreme Muslim Council**

On 7 May 2019, the Supreme Muslim Council, the central collective governing body of the Muslim denomination, expressed its concern at the frequent practice in recent months of investigating bodies to call muftis, imams and Muslim board leaders as witnesses in investigations based on accusatory complaints and signals. The manner of summoning and the overall approach to the summoned discriminatory and to some extent discredit the summoned and create distrust in the structures of the Muslim denomination. The Supreme Muslim Council called on the competent authorities to act more sensitively and in good faith, commensurate with the sensitivity of the subject.

## **The Jehovah's Witnesses**

### **Legislation**

The amendments to the new Denominations Act came into force on 1 January 2019. One of the newly-introduced amendments requires all religious organisations to register senior clergy with the Directorate of Religious Affairs. The Constitution of Bulgaria, the law of the European Union and the ECHR do not allow the state to require persons legally residing in the country to notify the authorities of their religious affiliation and activities. The ECtHR has ruled that such state interference is a violation of Article 9 of the Convention.

### **Restrictions by the Local Authorities**

The Jehovah's Witnesses encountered certain restrictions in their practice of preaching their faith and attracting their followers in public. The reasons for this were religious intolerance and negative false news in the media. In many of these cases, the restrictions were affected either by the official authorities or by members of the public. Several municipal authorities have enacted and enforced illegal local ordinances restricting the right to publicly express one's faith. In several cases, the Jehovah's Witnesses challenged these ordinances, and the courts ruled in favour of protecting religious freedom.

### **The Image of the Jehovah's Witnesses in the Media**

Some media continue to accuse the Jehovah's Witnesses of inciting to suicide, blackmailing elderly people with property, and bringing children at risk away from their families. The accusations are based on false news, which bring negative public opinion, harassment and material damage. Three decisions of the Supreme Court of Cassation found that SKAT TV and the *Vseki Den* newspaper deliberately spread lies about the Jehovah's Witnesses. Three Supreme Court decisions during the year upheld the freedom of religion of the Jehovah's Witnesses, as well as their reputation. One of the decisions is a final decision against Georgi Darakliev, leader of VMRO-BND in Burgas, who was sentenced for attacking the Jehovah's Witnesses in 2011, in which several people were injured.

## Anti-Semitism

On 22 April 2019, the leader of the Bulgarian National Union Zvezdomir Andronov participated in the show *Face to Face* on BTV where he presented the newly-established Fortress Europe Union, whose objectives are to "eliminate the influence of Marxism, the Zionist lobby, Freemasonry, left-wing parties and organisations, and Jihadist groups". After the broadcast, more than ten organisations said that Andronov's claims that "Gypsies, Turks, Armenians and Jews are guests in Bulgaria and if they are good guests, they can live here in peace" constituted preaching and incitement to discrimination based on race, nationality and ethnicity and are in direct violation of Article 162 of the Criminal Code of the Republic of Bulgaria. They also violated Article 10 §§ 5 and 6 of the Radio and Television Act that prohibit programmes instilling intolerance between the citizens and those that contradict the good morals, inciting hatred on the basis of racial, sexual, religious or national characteristics. The organisations turned to the Commission for Protection from Discrimination alleging xenophobic statements in a broadcast. The decision is pending.

## 7. Freedom of Expression

The past year was marked by severe political pressure on journalists and on the media, including the public media. The prevailing oligarchic model of media ownership further intensified its chilling effects on journalism. Fake news and defamatory campaigns become part of the new "normal".

### Overall Situation

Bulgaria continued to be the country with the least free media in the EU and the Western Balkans, retaining the 111th place out of 180 countries in the Reporters Without Borders *World Press Freedom Index*.<sup>26</sup> In 2006, Bulgaria ranked 35th.

According to the Media Sustainability Index of the international global development and education organisation IREX, the Bulgarian media environment meets only the minimum criteria for sustainability.<sup>27</sup> In May, the International Committee to Protect Journalists (CPJ) warned of harassment and threats against Bulgarian media.<sup>28</sup>

### Media Dependencies, Pressure

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<sup>26</sup> Reporters Without Borders (2019). *World Press Freedom Index*, available at: <https://rsf.org/en/ranking>.

<sup>27</sup> IREX (2019). *Media Sustainability Index*, available at: <https://www.mediasustainabilityindex.org/?country=BG&year=2019>.

<sup>28</sup> CPJ (2019). *Bulgaria's press navigate harassment, threats in pursuit of stories*, available at: [https://cpj.org/blog/2019/05/bulgaria-vikoria-marivona-threat-murder-investigative-reporting.php?fbclid=IwAR3EzNcxtkknjd88lBiMuhAYWnlSbTrFiOe\\_8PkuBSBFea25SRCWJeMLZqc](https://cpj.org/blog/2019/05/bulgaria-vikoria-marivona-threat-murder-investigative-reporting.php?fbclid=IwAR3EzNcxtkknjd88lBiMuhAYWnlSbTrFiOe_8PkuBSBFea25SRCWJeMLZqc).

During the year, we witnessed pressure and threats against media and journalists. One of the most emblematic cases was connected with the Bulgarian National Radio (BNR). In September, an attempt was made to remove Silvia Velikova, an anchor with the BNR's Horizon programme covering justice issues and remove her from the air because of her critical attitude towards the prosecutor's office and, in particular, to the election of the new Prosecutor General. In an unprecedented move, BNR switched off its transmitters for five hours - an event that points to the vulnerability of the public broadcaster's independence from political pressure, the Council of Europe said in a statement.<sup>29</sup>

The independent media site Bivol came under attack in 2019. Pressure over the publishers and journalists at the EconoMedia Media Group, which is critical to the government, continued.

The Council for Electronic Media elected the former politician Emil Koshlukov as General Director of Bulgarian National Television. The Association of European Journalists - Bulgaria condemned the decision citing Koshlukov's employment at the Alpha TV of the nationalistic Ataka party.

The Protection of Competition Commission allowed the selling of Nova TV to the businessmen Kiril and Georgi Domuschievi. After the unprecedented ban on the sale of the media to the PPF Fund owned by Czech billionaire Petr Kellner, the regulatory body was quick to approve the deal with the two Bulgarian businessmen who are close to the ruling GERB party. The TV station parted ways with a large number of their most prominent journalists and took a pro-governmental editorial position.

## **Legislation**

In the beginning of 2019, parliament adopted amendments to the Personal Data Protection Act, giving ample opportunities for prosecution of journalists in the performance of their official duties. President Rumen Radev vetoed the law and the Constitutional Court later declared the criteria unconstitutional.

In March, a group of online media announced that the legislation, popularly known as the 'Peevski Law',<sup>30</sup> seriously threatened their existence. The law adopted at the end of 2018 obliges the media to reveal to the authorities the data of persons who have donated even

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<sup>29</sup> Council of Europe (2019). *Suspension of Bulgarian National Radio Broadcasts Points to Vulnerability of Editorial Independence*, 14 November 2019, available at: [https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_pos=2&p\\_p\\_col\\_count=3&sojdashboard\\_WAR\\_coesojportlet\\_alertId=51950903&fbclid=IwAR0BmuLFQwZ--y26o9ETnVbl-ZYp91Z-RgxuKs\\_xYuiXkvWfZwyEXTibADQ](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_pos=2&p_p_col_count=3&sojdashboard_WAR_coesojportlet_alertId=51950903&fbclid=IwAR0BmuLFQwZ--y26o9ETnVbl-ZYp91Z-RgxuKs_xYuiXkvWfZwyEXTibADQ).

<sup>30</sup> Law on Compulsory Deposition of Printed and Other Publications and on Announcing the Distributors and Providers of Media Services (2018), available at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=D83A2A2BA3EEF2DD315B97A555279AE8?idMat=131640>.

minimal amounts, which discourages donors, is an administrative burden and threatens the sustainability of independent media.

## Quality

During the year, there were a number of cases of violation of ethical standards by the media. One of the most emblematic was related to the disclosure of personal data of a minor student under investigation for radicalization. In autumn, the PIK website, which is close to the government, published intimate photos of the girlfriend of the candidate for mayor of Sofia from the Democratic Bulgaria party, Borislav Ignatov.

A positive development in 2019 was the launch of news activities for Bulgaria and Romania of Radio Free Europe, which conducted a series of landmark investigations in the course of the year.

## ECtHR Judgements against Bulgaria on Freedom of Expression

On 18 April 2019, the ECtHR delivered a judgement in the case *Ifandiev v. Bulgaria*<sup>31</sup> (application no. 14904/11). The applicant is a publisher who in 2003 had published the book *The Shadow of Zion*.

## 8. Freedom of Association

2019 was a year of significant regress for freedom of association in Bulgaria. The deterioration started in 2018 with the campaign against civil society organisations in support of the ratification of the Istanbul Convention and continued with a series of defamation campaigns against them and other pro-European civil society organisations. Proposals were put forward to close down registered non-profit organisations; organisations of Macedonians in Bulgaria were subjected to harassment and were denied registration.

Throughout 2019, nationalist and pro-government media and social circles, with the active support of nationalist parties that are part of the governing coalition continued to carry out a series of fierce attacks against pro-European NGOs and their international donors. They were labelled "Sorosoids", "people without a motherland" and "national traitors"; government institutions were periodically urged to sever all ties with them and even ban them. The collaboration of such organisations, including the BHC, with various government institutions, therefore, was severely limited. In January 2020, 62 NGOs sent a letter to the European Commission Vice President Dubravka Šuica and to other commissioners expressing their concern over the new wave of attacks against pro-European civil society in Bulgaria that started in the autumn of 2019 in connection with the activation of conservative social circles to counter the recently passed Social Services Act. The signatories indicated the specific focus of the campaign against non-governmental organisations providing services under this law.

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<sup>31</sup> <https://laweuro.com/?p=2754>.

According to them, the campaign aimed to discredit the latter as agents of foreign influence undermining national values. They called on the EU to declare their support for the pro-European civil society in Bulgaria and to encourage the Bulgarian government "to oppose the campaign of hatred that calls into question the need for civil society organisations".<sup>32</sup>

At the end of September and throughout October, the reformist Union of Bulgarian Judges (UBJ) came under attacks from nationalist attacks. The reason was the early release of an Australian prisoner serving a murder sentence by a trial panel of the Sofia Court of Appeal, chaired by the President of the UBJ and the rapporteur on the case, an active member of the same organisation. The two judges were publicly accused of a conflict of interest because in the past one of them had received an award by the BHC and the other had contributed to the BHC 2016 *Annual Human Rights Report's* section on independence of the judiciary. In turn, the Chairman of the BHC, Krassimir Kanev, had submitted a brief character reference of the prisoner in his early release hearing at first instance, which concerned a side issue – the activities of the prisoner as chairperson of an NGO – and had no link to his correction. Two nationalist parties - Ataka and VMRO, both of them members of the governing coalition - staged rallies in front of the court, which publicly denounced the judges of the trial panel and demanded their resignation. Ataka and VMRO explicitly linked the judges' decision in this early release case to their membership in the Union of Bulgarian Judges. In addition, participants in the rally of the Ataka party demanded the indictment of the BHC under Article 105 of the Criminal Code "for espionage and service of a foreign state".<sup>33</sup> In early October, the Ataka party introduced a bill proposing a total ban on magistrates on joining professional organisations.<sup>34</sup> At the same time, the other two nationalist parties members of the governing coalition - VMRO and NFSB, introduced a bill that would limit foreign funding of magistrates' organisations to the European Union and the Norwegian Financial Mechanism.<sup>35</sup> The bills were not considered by parliament until the end of the year. In turn, former Prosecutor General Nikola Filchev said on national television: "The Union of Bulgarian Judges is a union of relatively few people. Their leaders are people with an inferiority complex and they have one important task - to carry out Soros' ideas [in Bulgaria] for a "fair" remuneration. They call this "the fight for Euro-Atlantic values". They all feed on Soros' money. This is an intricate system of non-governmental organisations that carry out [George Soros's] ideas. The Union of Judges is the most prominent example".<sup>36</sup>

The BHC also came under attack in the context of the campaign against the Union of Bulgarian Judges and the specific panel of judges that issued the decision. At the end of September, two members of the VMRO leadership, Angel Dzhambazki, an MEP and party deputy chairman, and Alexander Sidi, member of the Bulgarian parliament, sent a letter to the Prosecutor

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<sup>32</sup> The letter is available (in English) at: [http://bcnl.org/uploadfiles/documents/EU%20letter\\_62%20Bulgarian%20CSOs.pdf](http://bcnl.org/uploadfiles/documents/EU%20letter_62%20Bulgarian%20CSOs.pdf).

<sup>33</sup> "Ataka demands Kalpakchiev's resignation and investigation of the BHC", published on 24 September 2019, available at: <https://dariknews.bg/novini/bylgariia/ataka-iska-ostavkata-na-kalpakchiev-i-razsledvane-na-bhk-snimki-2188986>.

<sup>34</sup> "Ataka proposes ban on magistrates to be members of professional organisations", published on 4 October 2019, at: <https://www.svobodnaevropa.bg/a/30199078.html>.

<sup>35</sup> The bill is available at: <https://www.parliament.bg/bills/44/954-04-160.pdf>.

<sup>36</sup> "Nikola Filchev: The Union of Judges, Kalpakchiev and the BHC are fed by the money of Soros and the oligarch Prokopiev", 29 September 2019, available at: [http://www.pan.bg/view\\_article-6-495740-en-nikola-filchev-syjuzyt-na-sydiite-kalpakchiev-i-bhk-se-hranyat-ot-parite-na.html](http://www.pan.bg/view_article-6-495740-en-nikola-filchev-syjuzyt-na-sydiite-kalpakchiev-i-bhk-se-hranyat-ot-parite-na.html).



General requesting that the BHC is banned for “unacceptable interference in the judiciary and for anti-Bulgarian activity“. According to them, the BHC carried out anti-government activities by organising "workshops for judges, prosecutors and investigators, some of whom would then decide the fate of sentenced criminals“. On the other hand, the BHC had provided the procedural protection of certain individuals in cases presided over by the same magistrates to whom it conducted trainings. Thus, "surreptitiously", the principle of impartiality was circumvented by some of these magistrates.<sup>37</sup> A few days later, one of the signatories of the letter, Alexander Sidi, said: “The hypocritical, impudent and arrogant behaviour of [BHC Chair] Kanev and his people, who count the fees from the next lawsuit against their homeland with sweaty hands and are fed by all sorts of grants paid by unknown foundations, which have no interest in a strong Bulgaria, should be stopped IMMEDIATELY!“.<sup>38</sup>

The proposal of the VMRO stirred a wave of outrage among Bulgarian and international NGOs. The very next day, 42 international human rights organisations signed a declaration condemning the attack on the BHC and calling on the Bulgarian government “to [...] adhere to its international obligations in the field of freedom of association and other fundamental human freedoms by immediately ending threats against the BHC and ensuring the safety and opportunity for the organisation and its representatives to operate“.<sup>39</sup> Amnesty International and Human Rights Watch also issued special statements of support. Similarly, more than 100 Bulgarian intellectuals and NGOs declared their support for the BHC the day after Dzhambazki and Sidi's request. The petition organized by the Marginalia Human Rights Association states that the request for banning the BHC is “[...] an attack on the work of dozens of NGOs across the country that support the legislative, executive and judiciary bodies. It is also an attack on the possibility of active citizens to participate in the governance of the state through their competencies and representing their communities in the formation of various policies“.<sup>40</sup> In turn, MEP Dzhambazki demanded the closure of the organisations that supported the BHC.<sup>41</sup>

On October 8, Prosecutor General Tsatsarov rejected as unfounded Dzhambazki and Sidi's request to initiate proceedings to terminate the BHC's activities, as well as to investigate the organisation's activities. However, he pointed out that anyone interested could request such

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<sup>37</sup> "VMRO wants Tsatsarov to terminate the activities of the BHC due to unacceptable interference in the judicial system of Bulgaria", published on 30 September 2019 at: <http://www.vmro.bg>.

<sup>38</sup> "Alexander Sidi from VMRO insists that the BHC is closed", published on 3 October 2019 at: <https://novini.bg/bylgariya/politika/560614>.

<sup>39</sup> "Civil society coalition denounces attack on Bulgarian Helsinki Committee", published on 1 October 2019, at: [http://civicsolidarity.org/sites/default/files/csp\\_statement\\_on\\_attack\\_on\\_the\\_bhc\\_1\\_oct\\_2019\\_2.pdf](http://civicsolidarity.org/sites/default/files/csp_statement_on_attack_on_the_bhc_1_oct_2019_2.pdf).

<sup>40</sup> "100 university professors, writers, teachers and human rights activists condemn VMRO-BND request to terminate BHC activities ", published on 1 October 2019, at: <https://www.marginalia.bg/novini/sdruzhenie-za-choveshki-prava-marginaliya-universitetski-prepodavатели-aktivisti-izrazyavat-ostro-nesaglasie-s-iskaneto-na-vmro-bnd-za-prekratyavane-dejnostta-na-naj-avtoritetnata-pravozashtitna-organ/>.

<sup>41</sup> "Dzhambazki demands closure of organisations that support BHC", published on 7 October 2019 at: <https://www.svobodnaevropa.bg/a/30203252.html>.

a termination directly in court.<sup>42</sup> On the same day, member of parliament Sidi said that VMRO would file a lawsuit in the Sofia City Court to terminate the activities of the Bulgarian Helsinki Committee.<sup>43</sup> This did not happen by the end of 2019.

On 19 November, the VMRO referred to the Prosecutor General the case for the registration of two associations of Macedonians in Bulgaria - the Civil Association for the Protection of Fundamental Individual Human Rights and the Ancient Macedonians. Both were registered earlier in the year by the Registry Agency. Mr Karakachanov, Deputy Prime Minister and VMRO party leader, personally referred this case to the Prosecutor's Office. According to him, the two associations share "dangerous similarities with the activities carried out years ago by the prohibited by a decision of the Constitutional Court UMO Ilinden - PIRIN, dangerous propaganda activities that openly lead to separatism and to the formation of a minority, which runs contrary to the Constitution of the Republic of Bulgaria".<sup>44</sup> The police and the State Agency for National Security (SANS) began immediate inspections, which included interviews with members of the associations, as well as the lawyers who had drafted the registration documents. At the same time, a number of pro-government media launched a hostile campaign against the associations, without seeking their representatives' point of view.

On 21 November 2019, the Prosecutor General announced that he had been approached by SANS about the registration of one of the associations, the Civil Association for the Protection of Fundamental Individual Human Rights, whose objectives were directed against "the union of the nation" and posed a "threat to national security". For this reason, the Prosecutor General sent the report from SANS to the Blagoevgrad District Prosecutor's Office, which filed a claim for termination of the association. The claim was uploaded on the website of the prosecution. It requested the Association's dissolution because it engaged in activities against "unity of the nation" in violation of Article 44 § 2 of the Constitution because it protected the rights of Macedonians in Bulgaria, and "there is no Macedonian ethnic minority in Bulgaria". In addition, according to the prosecution, the activity of the association contradicted Article 12 § 2 of the Constitution as it intended to "take a stand on current international, domestic, economic and other issues" that were characteristic of a political party. Currently, the case for termination of the Civil Association for the Protection of Fundamental Individual Human Rights has been initiated and will be heard in the Blagoevgrad Regional Court. On 12 December, 36 organisations from Europe and Central Asia - members of the Civil Solidarity Platform signed a declaration criticizing the intentions to terminate the registration of the association. They described the authorities' actions as "harassment of human rights defenders" and called on the EU institutions to "take institutional and political action to stop these violations of fundamental human rights against the Macedonian minority in Bulgaria".<sup>45</sup>

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<sup>42</sup> "Prosecutor General does not find grounds for court request to terminate the Bulgarian Helsinki Committee", published on 8 October 2019, at: <https://prb.bg/bg/news/aktualno/glavni-ja-t-prokuror-ne-namira-osnovani-ja-za--114>.

<sup>43</sup> "The Patriots appeal to Sofia City Court to close the BHC", published on 8 October 2019, at: <https://news.bg/crime/voyvodite-se-obrashtat-kam-sgs-za-zakrivane-na-bhk.html>.

<sup>44</sup> "Karakachanov to the Prosecutor General: They are trying to create a Macedonian minority in Bulgaria", published on 19 November 2019, at: <https://www.24chasa.bg/novini/article/7886556>.

<sup>45</sup> Civil Solidarity Platform, "Respect and recognition for the Macedonian minority in Bulgaria: strong condemnation of the announcements for a possible deregistration of a human rights organization", 12 December 2019, available at: <https://www.civicsolidarity.org/article/1640/respect-and-recognition-macedonian-minority-bulgaria-strong-condemnation-announcements>.

Similar termination actions are expected to be launched against the other registered Macedonian organisation, the Ancient Macedonians, whose representatives, as well as their lawyers, were questioned by SANS and police agents in December 2019 and January 2020.

In 2019, several other Macedonian organizations were denied registration on arbitrary and discriminatory grounds. The association UMO Ilinden submitted several applications for registration to the Registry Agency, but they were all rejected on formal grounds. Another Macedonian organisation, the Association of Repressed Macedonians in Bulgaria, Victims of Communist Terror, also made yet another unsuccessful attempt to obtain registration as a legal entity. The failure in this case is also due to the nature of the association, the fact that it belongs to Bulgarian citizens with Macedonian identity. After a series of refusals in previous years, it was reincorporated in June 2019 and immediately applied for registration with the Registry Agency. On June 20, the agency refused to register the association, arguing that the its statutes did not provide for carrying out business activities. The Non-Profit Legal Entities Act enables Bulgarian non-profit organisations to carry out economic activity, but does not oblige them to have such. The association appealed against the refusal before the Blagoevgrad Regional Court. By a decision of 5 August 2019, the court upheld the refusal, reiterating the lack of economic activity in the statutes and adding two more - the fact that the association limited its activities to protecting only repressed Macedonians and that it provided for "organising rallies and demonstrations" which, according to the court, was an activity characteristic of a political party. Therefore, the association should be re-registered as such. The association appealed this decision.

On 24 October 2019, the Sofia Appellate Court (ACS) upheld the decision of the Blagoevgrad Regional Court, but completely ignored the grounds for the regional court's refusal and justified its decision with other reasons. According to ACS, the statutes of the association contradicted Article 44 § 2 of the Constitution, which prohibits associations whose activities are directed against the "unity of the nation". According to the court, "an organisation for the protection of the interests of an ethnic minority, which is not historically structured and separated on the territory of the Republic of Bulgaria, should also be qualified as such". Insofar as the association's statutes contain allegations of the existence of a Macedonian ethnic minority, which according to the court does not actually exist in Bulgaria, the "systematic" interpretation of the statutes in the light of this constitutional provision leads to the conclusion that promoting a Macedonian minority "[...] cultivates among a certain part of the Bulgarian citizens a different ethnic self-consciousness, which was not formed naturally, and therefore it is directed against the unity of the nation". In addition, according to the ACS, the statutes of the association formulate political goals related to the implementation of activities characteristic of a political party, which the provision of Article 12 § 2 of the Constitution does not allow. The decision does not specify exactly what the political goals in question are and in which provisions of the organisation's statutes of association they are formulated.

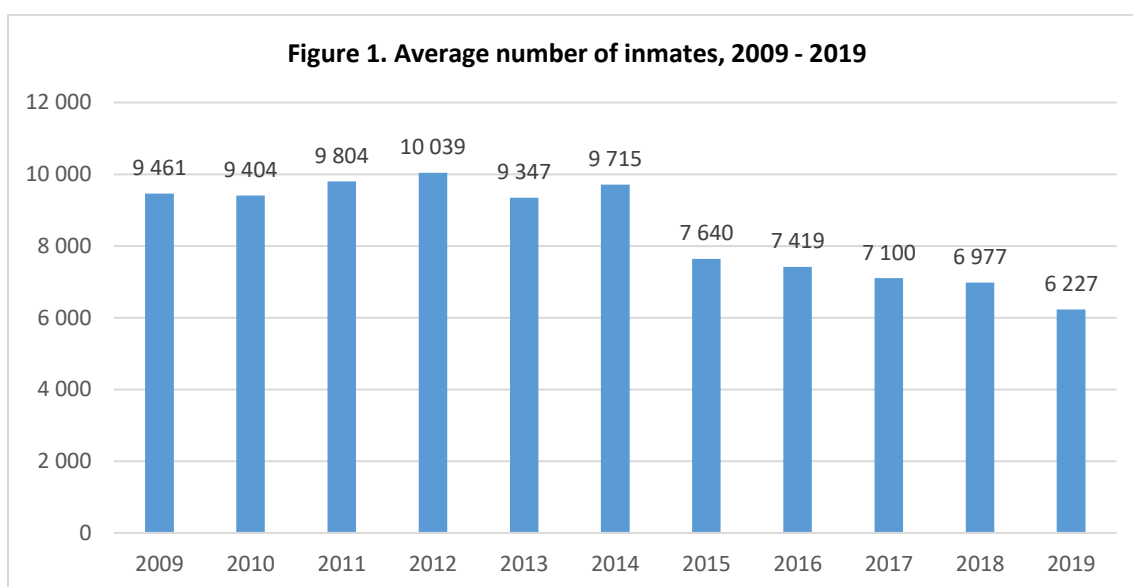
This decision of the ACS marks a new approach to the refusal to register Macedonian associations. Until now, the courts had tried to conceal their true motives and give their refusals some semblance of conformity with interpretations of the Constitution that are not directly discriminatory. The ACS decision ignores this approach and directly links the

Macedonian nature of the association to the constitutional provision banning associations whose activities are directed against the "unity of the nation".

## 9. Conditions in Places of Detention

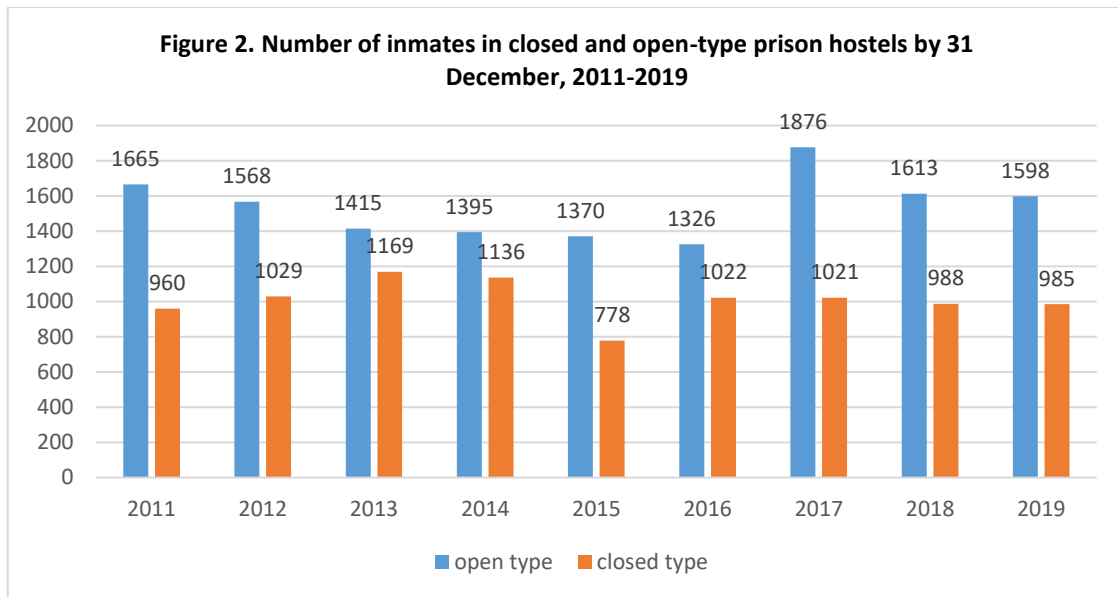
### Prisons and Prison Hostels

In 2019, for the fifth consecutive year, the trend towards a decrease in the total number of prisoners in Bulgaria's penitentiary establishments continued. According to data provided by the Directorate General of Execution of Sentences, the average number of inmates in 2019 was 6,227, of which 203 were women (Figure 1 below).



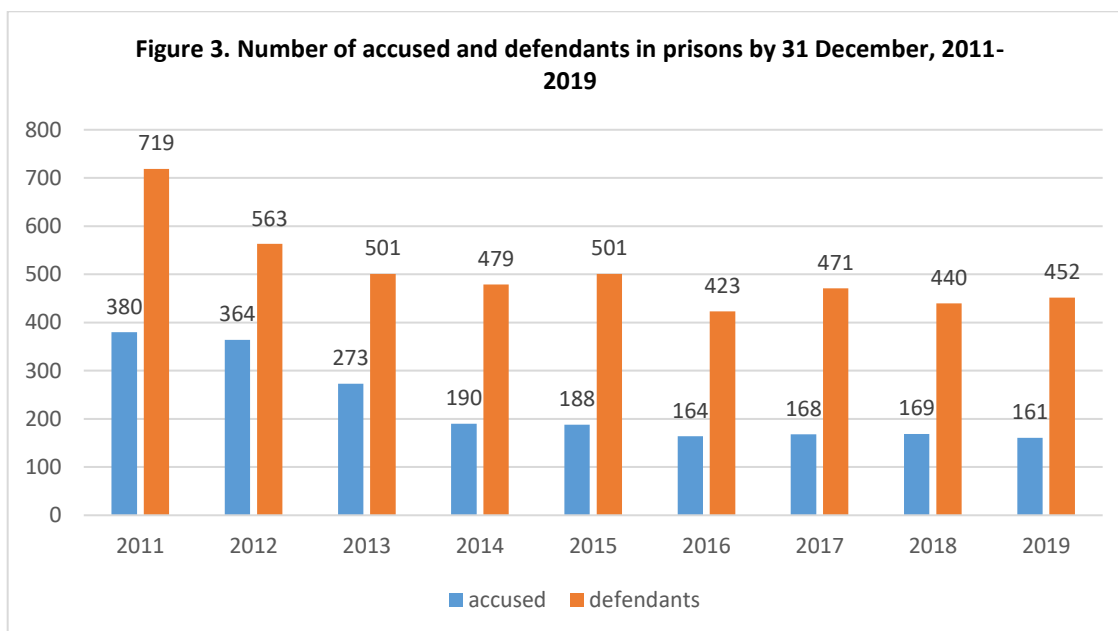
Source: Directorate General of Execution of Sentences

There are twelve prisons functioning in the country; in addition, there are seven closed prison hostels, 19 open-type hostels and two correctional facilities for minors (the latter at the prisons in Vratsa and Sliven). During the year, the open-type hostel Vereya was opened at the prison in Stara Zagora with a capacity of 54 places. A total of 3,644 prisoners were accommodated in the twelve prisons, 985 in the closed hostels and 1,598 in the open-type hostels. The two correctional facilities held 18 minors deprived of their liberty. Compared to the previous year, the number of prisoners in both types of hostels did not change significantly (Figure 2 below).



Source: Directorate General of Execution of Sentences

The numbers of accused and defendants in prisons also remained relatively unchanged compared to 2018. Figure 3 below shows their number as of December 31 by year:



Source: Directorate General of Execution of Sentences

A new correctional facility for boys was opened at the Vratsa Prison for juvenile inmates in 2018. In 2019, it was equipped with a new sports hall for mini football and a gym. However, the facility still lacks a reception room and a visits room.

By virtue of decision of the Director General of the Directorate General of Execution of Sentences No. L-3178 of 12 July 2019, the Chair of the Board of the Bulgarian Prison Rehabilitation Association Jock Palfreeman was granted access to public information on the capacity of all prisons and open-type and closed prison hostels, as well as on the number of

prisoners held in them. According to the information provided, as of 2 June 2019, in two of the main prison buildings (Sofia and Plovdiv) the number of detainees exceeded the facility capacity calculated on the basis of 4 sq. m. per inmate. As of the same date, there was overcrowding in one of the closed hostels at the prison in Burgas, as well as in seven open-type hostels, two of which again in Burgas, two in Varna and one each in Pazarjik, Pleven and Plovdiv. Along with overcrowding, the main problem for the prison in Sofia is the extremely depreciated building and the impossibility to carry out repairs on it that would allow this facility to provide adequate conditions for serving of sentences. In connection with this, after visiting the Sofia Prison in July 2019, the Ombudsman as the National Preventive Mechanism (NPM) once again recommended to the Minister of Justice, the Directorate General of Execution of Sentences and the Penitentiary State Fund to take the necessary actions for the construction of a new prison in Sofia that would allow for eventual closure of the Kremikovtzi hostel and the Sofia Prison.<sup>46</sup>

The construction of a new prison in Sofia has been under discussion during the last 15-20 years. In 2018, a project worth BGN 35 million (EUR 18 million) was discussed for the construction of a pilot prison with a training centre in the Kremikovtzi area near Sofia, on the premises of the prison hostel. After that, a project was under discussion near the Kazichene prison hostel, for the same amount. The Norwegian Financial Mechanism provided for the construction of a prison in the former barracks of the village of Samoranovo near Dupnitsa, where a hostel at the Bobov Dol Prison operates. To date, construction has not begun, but in 2019 the NPM at the Ombudsman opposed this project arguing that the construction of a prison 40 km away from Sofia would put Sofia prisoners at a disadvantage, as as a rule all prisoners must be housed in prisons close to their homes or places of social rehabilitation.<sup>47</sup>

In late December 2019, the Council of Ministers adopted a Strategy for the Development of the Penitentiary System in Bulgaria for the period up to 2025 without putting it up for public discussion. Its objectives are to modernize and reform the penitentiary system in accordance with European standards. Together with the strategy, an action plan and a financial plan were prepared. The main strategic task is the construction of a pilot prison with a capacity of 400 inmates and a training centre with a capacity of 100 trainees, but its location is still unclear. The sub-tasks in the Strategy are to renovate the prison building in Plovdiv and to establish several hostels around prisons, a probation service and a training centre.

In 2019, the repairs of the main buildings of the prison in Bobov Dol and of the Cherna Gora closed hostel functioning at the prison in Stara Zagora were completed. In Pazarjik Prison, where the repair works are under way, however, the entire Western wing in the prison, which houses the prison hospital, is not even included in the repair plans. In this prison, as well as in others, except for the women's prison in Sliven, despite the repairs, the sanitary and hygienic conditions are substandard and the problem with infestation with bedbugs and

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<sup>46</sup> Ombudsman of the Republic of Bulgaria (2019), *Report of the National Preventive Mechanism on Inspections of the Directorate General of Execution of Sentences; Sofia Prison, Kremikovtzi and Kazichene Prison Hostels, investigation detention facilities on G.M. Dimitrov Boulevard and Major Vekilski Street*, p. 42, available in Bulgarian at: <https://www.ombudsman.bg/pictures/file/%D0%9F%D1%80%D0%BE%D0%B2%D0%B5%D1%80%D0%BA%D0%B0%20%D0%93%D0%94%D0%98%D0%9D%202019.pdf>.

<sup>47</sup> *Ibid*, p. 17.

cockroaches in the cells remains unsolved. The same problem was established by the Committee for the Prevention of Torture, which in its report to the Bulgarian government in 2018 reported about the infestation with bedbugs, inadequate medical care, limited access to work and education, restrictive conditions for visits, highly restrictive detention regime for pre-trial detainees, interprisoner violence and insufficient numbers of prison staff. In 2019, the Ombudsman also reported on the problem of bed bugs in the cells and asked the Director General of Execution of Sentences to provide information on how the problem in being addressed.<sup>48</sup>

Although legislative amendments in 2017 eased the conditions for conditional early release, the number of those released under this procedure did not mark an increase. In the last three years, the number of those releases on early release is given below:

**Table 2. Conditional early releases, 2017-2019**

	<b>2017</b>	<b>2018</b>	<b>2019</b>
Number of inmates that were conditionally early released	1,282	970	790

As illustrated above, the number of those released early in the last three years has decreased disproportionately to the decrease in the number of those sentenced to imprisonment.

The institute of pardon, which is not subject to any clear written rules, continued to function ineffectively. Despite the large number of applications for pardon – 400 annually, there are just a few pardons each year. There are no written objective criteria for pardons. According to data from the Directorate General of Execution of Sentences, as of 31 December 2019, a total of 190 persons are serving life sentences in prisons, of which 60 - without the right to parole. In a series of European Court of Human Rights judgments, including against Bulgaria, the Court has ruled that the existence of such a penalty in the Bulgarian Criminal Code could lead to a violation of Article 3 of the ECHR if there is no mechanism in place to replace it. According to BHC reports on life imprisonment without parole, this sentence is in gross violation of European standards. The organisation recommends that it should be abolished from the Criminal Code. In 2018, the same recommendation was also put forward by the CPT in their report to the Bulgarian government. In October 2019, more than 80 prisoners serving life sentences in various prisons sent a request to the European Commission, the European Parliament and the National Assembly of the Republic of Bulgaria, in which they pointed out a large number of violations of their rights and demanded that the institutions take measures to prevent the inhuman and degrading treatment of them resulting from the existence of such sentences in Bulgaria.

The number of working inmates in 2019 increased compared to the previous year. According to the Directorate General of Execution of Sentences, the total number of working inmates was 4,750, of which 1,568 were engaged in voluntary unpaid labour in accordance with Article 80 of the Law on the Execution of Sentences and Detention on Remand.

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<sup>48</sup> *Ibid.*, p. 19.

For another year, the number of inmates enrolled in school education decreased. As of 31 December 2019, their number was 1,080, of which 124 were enrolled in first grade. According to the conditions for admission of students to prisons, those prisoners who have short sentences (three to six months in prison) cannot be enrolled as students. This requires that more flexible conditions for access to education are created and this access should not be tied to the length of the sentence. Practice shows that many prisoners need not so much to attend school, but rather literacy and vocational courses. A possible solution is the adoption of individual training programmes tailored to the length of the sentence.

In May 2019, the Supreme Administrative Court ruled on the appeal of 15 prisoners for the conditions under which an extended visit can last up to 4 hours, which in prisons is commonly called an 'intimate visit'. According to an order of the Director General of the Directorate General of Execution of Sentences from 2016, it is held in rooms equipped with cameras and in front of supervisors. The prisoners won the case and the order was overturned.<sup>49</sup> Shortly afterwards, however, the same conditions were adopted in the Rules for the Implementation of the Law for Execution of Sentences and Detention on Remand, whereby the request of the detainees to meet in private with their relatives remained unfulfilled.

In 2019, the National Preventive Mechanism at the Office of the Ombudsman made a number of worrying conclusions on the state of health care in prisons warning that "the Ministry of Justice, respectively the DG Execution of Sentences, has systematically neglected health care in the penitentiary system".<sup>50</sup> One of the most worrying findings relates to the two prison hospitals. With respect to the Specialized Hospital for Treatment of Prisoners in Sofia, the Ombudsman noted that the hospital "works outside the medical standards for this type of facility under the relevant legislation for medical establishments", "is left without control", has substandard material conditions, but with treatment costs of person-days higher than those in university and national hospitals.<sup>51</sup> The findings of the Ombudsman's visit to the hospital in Lovech, which is supposed to provide treatment for prisoners with psychiatric and lung diseases, reveal that the hospital has neither a psychiatrist nor a lung specialist.<sup>52</sup> The unsuitability of the penitentiary system to take active treatment of prisoners obliges patients to be referred to community health facilities, but due to insufficient resources to provide

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<https://news.lex.bg/%D0%B7%D0%B0%D1%82%D0%B2%D0%BE%D1%80%D0%BD%D0%B8%D1%86%D0%B8-D1%81%D0%BF%D0%B5%D1%87%D0%B5%D0%BB%D0%B8%D1%85%D0%B0-%D0%B4%D0%B5%D0%BB%D0%BE%D1%82%D0%BE-%D0%B7%D0%B0-%D1%81%D0%B5%D0%BA%D1%81-%D0%B1/>

<sup>50</sup> Ombudsman of the Republic of Bulgaria (2019), *Report of the National Preventive Mechanism on the inspections of Directorate General of Execution of Sentences; Sofia Prison, Kremikovtzi and Kazhichene Hostels; the investigation detention facilities at G.M. Dimitrov Boulevard and Majoy Vekislki Street*, p. 42, available in Bulgarian at: <https://www.ombudsman.bg/pictures/file/%D0%9F%D1%80%D0%BE%D0%B2%D0%B5%D1%80%D0%BA%D0%B0%20%D0%93%D0%94%D0%98%D0%9D%202019.pdf>.

<sup>51</sup> *Ibid.*, pp. 41-42.

<sup>52</sup> Ombudsman of the Republic of Bulgaria (2019), *Report of the National Preventive Mechanism on the inspections in the prisons in the cities of Lovech and Pleven; the hostels and detention facilities functioning at them*, pp. 2-3, available in Bulgarian at: <https://www.ombudsman.bg/pictures/file/%D0%9B%D0%BE%D0%B2%D0%B5%D1%87%20%D0%B8%20%D0%9F%D0%BB%D0%B5%D0%B2%D0%B5%D0%BD%202019%20%D0%B3.pdf>.



convoys and security outside the prison, this activity is often difficult and untimely. BHC observations reveal that in many cases the organisation of examinations and treatment in external medical institutions is provided by the detainees' relatives, and not by the employees of the medical centers.

Another serious problem is connected with the declining activity on HIV prevention and diagnosis in prisons after the withdrawal of the Global Fund to Fight AIDS, Tuberculosis and Malaria in 2017. According to regulations, HIV testing is offered to all newly-admitted prisoners, and in the process of serving the sentence - to certain groups of high-risk prisoners. However, no funds are provided in the General Directorate of Execution of Sentences budget for HIV testing. In this regard, the Ombudsman's observations are of serious concern. According to them, as of August 2019 "for over a year no [HIV] testing has been conducted in the prisons in Sofia, Varna, Bobov Dol, Lovech, Burgas, and Pazarjik".<sup>53</sup> The data from the General Directorate of Execution of Sentences reveals that compared to 2014, the number of tests in 2019 was five and a half times lower.

**Table 3. HIV testing in prisons**

<b>Number of HIV tests and number of new HIV-positive cases among inmates, 2012-2019</b>								
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Number of HIV tests	4,074	3,883	4,240	4,406	1,751	781	875	731
Number of new HIV-positive cases among inmates	31	13	5	5	2	3	4	2

Source: Directorate General of Execution of Sentences

A key judgment in the field of prisoners' health rights was delivered in 2019. The court ordered the head of Sofia Prison to provide immediate treatment to an applicant diagnosed with Hepatitis C and Hepatitis B.<sup>54</sup> Although detainees are insured from the moment of detention and the costs of treating Hepatitis C and Hepatitis B are borne by the Health Insurance Fund, prisoners usually do not receive appropriate treatment due to the need to be taken to external medical facilities for tests and other medical procedures.

The record high number of prisoner hunger strikes in 2019 is also alarming. Food refusals are a form of peaceful protest against decisions, actions and inactions of the prison authorities. Although there are no statistics on the specific reasons for refusing food, the increase in their number is an indicator of deteriorating conditions in prisons, including problems in

<sup>53</sup> Ombudsman of the Republic of Bulgaria (2019), *Letter to the Ministry of Healthcare and Directorate General of Execution of Sentences on the organization and systemic testing for control and prevention of HIV/AIDS of prisoners across the country's prisons*, available in Bulgarian at: <https://www.ombudsman.bg/pictures/file/%D0%9F%D0%B8%D1%81%D0%BC%D0%BE%20%D0%A5%D0%98%D0%92-%D0%A1%D0%9F%D0%98%D0%9D.pdf>.

<sup>54</sup> Sofia City Administrative Court (2019), Ruling No. 5057 from 5 July 2019.

communication between prisoners and the prison authorities, growing distrust in formal application mechanisms and complaints.

**Table 4. Hunger Strikes in Prisons**

Number of food refusals (hunger strikes) of inmates, 2012-2019						
	2014	2015	2016	2017	2018	2019
Number of food refusals	316	305	280	368	533	640

Source: Directorate General of Execution of Sentences

A study of the preventive remedy revealed that during the year there were a total of eight upheld claims by the court for granting or terminating actions or inactions that constitute a violation of the prohibition of torture, cruel, inhuman or degrading treatment or punishment. However, the number of rejected claims is significantly higher – in 59 cases the court did not find grounds to provide protection from torture. There are several reasons for the small number of upheld claims – the reluctance of the administration to inform prisoners on how to seek their rights in court and to use the preventive measure, the lack of free legal aid for litigation and, last but not least, inmates’ fears that they will be sanctioned for seeking court protection. The analysis of the compensatory remedy revealed that in 2019 the number of accepted claims by the court was 101 and that of rejected claims – 112.

The study of the case-law from 2019 on prisoner requests for prevention and termination of situations that constitute inhuman or degrading treatment, as well as on claims for compensation for damages suffered as a result of such treatment, sheds new light on the ineffectiveness of the protection procedures introduced in 2017. Although the number of prisoner requests for preventive measures is growing, most of the cases are not even heard on the merits due to procedural irregularities. The reasons are usually failure to pay the state fee,<sup>55</sup> failure to specify the defendants, failure to indicate a specific action or inaction whose termination is sought, etc. From the petitions that were heard by the court, only a small number were actually established where the court granted the requested protection. These relate to: providing access to a gym,<sup>56</sup> outdoor stay in favorable conditions,<sup>57</sup> seasonal clothing and footwear,<sup>58</sup> personal hygiene materials and cleaning products,<sup>59</sup> cell repairs,<sup>60</sup> treatment of Hepatitis C and Hepatitis B,<sup>61</sup> adequate water and heat supply.<sup>62</sup> In order to be considered effective, the protection mechanism must allow for the immediate consideration and adjudication of prisoners’ complaints. However, this condition is not met, as there are

<sup>55</sup> Supreme Administrative Court, fourth division (2019), Determination no. 713, 17 January 2019, case no. 15652/2018; Pleven Administrative Court (2019), Determination no. 274, 13 February 2019, case no. 138/2019; Pleven Administrative Court (2019), Determination no. 385, 5 March 2019, case no. 211/2019.

<sup>56</sup> Vratsa Administrative Court (2019), Injunction no. 1313, 22 November 2019, case no. 584/2019.

<sup>57</sup> Vratsa Administrative Court (2019), Injunction no. 1312, 22 November 2019, case no. 585/2019.

<sup>58</sup> Sofia City Administrative Court (2019), Judgment no. 7328, 26 November 2019, case no. 7658/2019.

<sup>59</sup> Sofia City Administrative Court (2019), Injunction no. 5215, 11 July 2019, case no. 6004/2019.

<sup>60</sup> Sofia City Administrative Court (2009), Injunction no. 6576, 5 September 2019, case no. 8424/2019.

<sup>61</sup> Sofia City Administrative Court (2019), Determination no. 5057, 5 July 2019, no. 7314/2019.

<sup>62</sup> Sofia City Administrative Court (2019), Determination no. 8549, 5 November 2019, case no. 9152/2019.

examples of year-long proceedings from the moment of submission of the request to the entry into force of the court order.<sup>63</sup>

In many cases, inmates make requests to the court that are not relevant to the preventive remedy against inhuman or degrading treatment: reinstatement, return of confiscated items, use of an electric hob in the room, etc. The reasons are their limited access to legal information and professional legal assistance, which would enable them to find out the right protection mechanisms for each specific case.

The court case-law reveals extremely low compensations for non-pecuniary damages suffered by inmates who have been subjected to inhuman or degrading treatment on account of poor material conditions and overcrowding in places of deprivation of liberty. The awarded compensations are within one or two Bulgarian levs per day or about 50-60 BGN a month (25-30 EUR),<sup>64</sup> which is far below the levels of compensation determined by the ECtHR in cases addressing similar violations against Bulgaria - about 10 Bulgarian levs per day or 300 BGN a month (150 EUR).<sup>65</sup>

### **Investigation Detention Facilities**

As of the end of 2019, there were 28 investigation detention facilities (IDFs) in the country. Their number decreased by four at the beginning of the year when the IDFs in Pernik, Targovishte, Razlog and Montana were closed due to insufficient workload. During the year, the trend of moving IDFs to prison premises continued. In May 2019, a new IDF was opened in a separate building next to the Stara Zagora Prison, and in August 2019 a new facility was opened on the territory of the Sliven Prison, which increased the number of IDFs operating in prisons or prison hostels to eight. With the closure of the four detention facilities and the relocation of the detention facilities in Stara Zagora and Sliven, another step was taken to implement the recommendation of the Committee for the Prevention of Torture, which in 2014 recommended to the Bulgarian authorities to phase out all investigation detention facilities in Bulgaria.<sup>66</sup>

In previous years, the DG Execution of Sentences had plans to improve detention conditions. These plans included moving the Kyustendil IDF to the premises of Bobov Dol Prison, moving the IDFs in Veliko Tarnovo and Gabrovo to a new building on the territory of the prison hostel in Veliko Tarnovo, building a new IDF in Silistra, and repairing the IDFs in several cities. There

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<sup>63</sup> Sofia City Administrative Court (2019), Determination no. 8549, 5 November 2019, case no. 9152/2019.

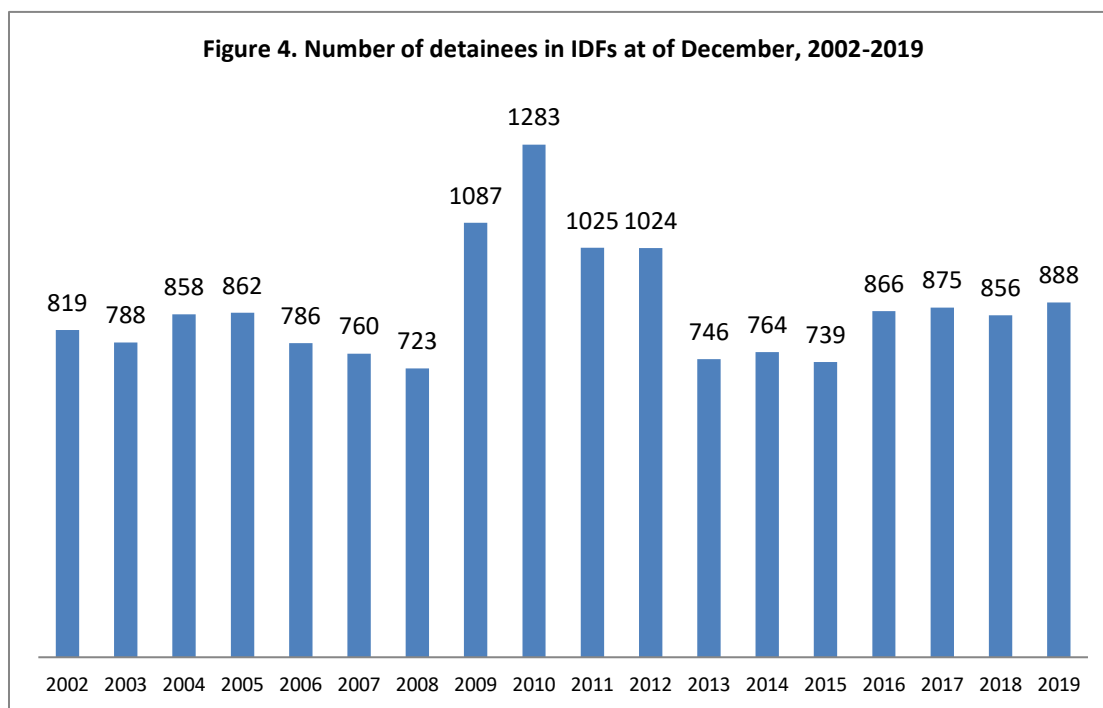
<sup>64</sup> Supreme Administrative Court, third division (2019), Judgement No. 17545, 19 December 2019, case no. 2594/2019; Supreme Administrative Court, third division (2019), Judgement No. 17472, 19 December 2019, case no. 1781/2019; Supreme Administrative Court, third division (2019), Judgement No. 15506, 14 November 2019, case no. 4554/2018; Supreme Administrative Court, third division (2019), Judgement No. 13355, 8 October 2019, case no. 8039/2018; Supreme Administrative Court, third division (2019), Judgement No. 10909, 12 July 2019, case no. 34/2019; Supreme Administrative Court, third division (2019), Judgement No. 9500, from 20 July 2019, case no. 5498/2018.

<sup>65</sup> ECtHR, *Neshkov and Others v. Bulgaria*, Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, 27 January 2015, §§ 294-303.

<sup>66</sup> Committee for the Prevention of Torture (2015). Report to the Bulgarian Government on the visit to Bulgaria, conducted from 24 March to 3 April 2014, § 48.

was a plan to relocate the IDF in the town of Sandanski to a new detention building in the town of Petrich, but it is still not functional. These plans remain unfulfilled still.

According to the DG Execution of Sentences, the total number of inmates in detention in 2019 was 11,579, of which 937 were foreign nationals, 397 women and 99 juveniles. The average daily number of people accommodated in IDFs during the year was 1,008 people, and as of 31 December 2019 it was 888 people. Figure 1 below shows the number of detainees in detention as of December by year:



Source: Directorate General of Execution of Sentences

According to DG Execution of Sentences, the length of detention in IDFs was as follows:

- up to 72 hours – 1,404 persons;
- up to two months – 9,195 persons;
- over six months - 661 people.

With a Decision of DG Execution of Sentences No. L-225 from 16 January 2020, the BHC was provided with public information, according to which in 2019 overcrowding was established in a total of five IDFs in the cities of Blagoevgrad, Vidin, Kyustendil, Stara Zagora and the detention center on G.M. Dimitrov Boulevard in Sofia. With another decision of the Director General of DG Execution of Sentences No. L-3178 from 12 July 2019, the Chairman of the Bulgarian Prison Rehabilitation Association Jock Palfreeman was granted access to public information on the capacity of all IDFs and the number of detainees in them. According to this data, as of 2 June 2019, the number of detainees in 10 IDFs exceeded their capacity:

IDF	Capacity at 4 sq.m. per inmate	Number of detainees
Blagoevgrad	16	22
Sandanski	4	7

Burgas	39	44
Varna	59	60
Vidin	23	29
Dobrich	14	22
Kystendil	13	15
Sliven	20	21
Svilengrad	9	13
G.M. Dimitrov Blvd., Sofia	249	274

During the year, a BHC monitor visited the IDF in the town of Dobrich, where 33 detainees were being detained in the facility with a capacity of 14 persons (the date of the visit was 4 April 2019). In the spring of 2019, the BHC visited three other IDFs in Silistra, Haskovo and Svilengrad, where no overcrowding was established, but the monitors observed extremely poor material conditions. Immediately after the visits, the BHC sent a signal to the Minister of Justice informing him that the cells of these four detention facilities has insufficient access to natural light - natural light penetrated only from the windows above the cells, which were secured with thick bars or drilled holes. The ventilation was also poor. Half of the cells in the IDF in Haskovo had small unopenable windows measuring 70 cm x 70 cm that were secured with thick bars that prevented access of light inside the cells. The four visited IDFs have no lavatories in the cells. In each of them, the access to the only toilet was carried out after knocking on the door and requesting to be taken to it. Interviews with convicted prison inmates revealed that in the IDFs in Haskovo and Dobrich they were forced to urinate in bottles as they had to wait for hours to be taken to the only toilet. The four visited IDFs do not provide outdoor stay. The IDFs in Haskovo and Silistra have facilities for indoor exercises, but the ones in Svilengrad and Dobrich have no facilities for physical activity. The BHC informed the Minister of Justice that these material conditions are in drastic violation of the prohibition of torture and inhuman or degrading treatment under Article 3 §1 of the Execution of Punishments and Detention on Remand Act, as § 2 of the said article provides that: "...lack of sufficient living space, [...] lighting, ventilation, [...] conditions for physical activity, prolonged isolation without the possibility of communication [...]" constitute violations of this prohibition. After the introduction of the compensatory protection in the Execution of Punishments and Detention on Remand Act, detainees could claim compensation for the inhuman and degrading conditions they are placed in. Data from the DG Execution of Sentences about five attempted suicides in 2019 and two deaths in IDFs is evidence of the existence of such treatment in these facilities.

In its report from its visit to the largest IDF in the country in Sofia on G.M. Dimitrov Boulevard, the National Preventive Mechanism established that with a capacity of 249 people (calculated on the basis of 4 sq. m. per inmate and using four beds in the cells), on the day of the visit, the IDF accommodated 264 people. Their number the previous month had been 289.<sup>67</sup> Two square meters remain unusable in each cell as there is a lattice along the entire length of the

<sup>67</sup> Ombudsman of the Republic of Bulgaria (2019). *Report of the National Preventive Mechanism on the inspections of Directorate General of Execution of Sentences; Sofia Prison, Kremikovtski and Kazhichene Hostels; the investigation detention facilities at G.M. Dimitrov Boulevard and Majoy Vekislki Street*, p. 34, available in Bulgarian at: <https://www.ombudsman.bg/pictures/file/%D0%9F%D1%80%D0%BE%D0%B2%D0%B5%D1%80%D0%BA%D0%B0%20%D0%93%D0%94%D0%98%D0%9D%202019.pdf>.

cells in front of the windows. Only ten out of the 80 cells in the detention facility have access to a toilet with a seat, and these are cells intended for accommodation of women and minors. The toilets in all other cells are of the Asian type, which makes it extremely difficult for people with disabilities of the lower limbs to use them. Along with insufficient lighting and the poor ventilation, the main problem in the IDF are the toilets that fail to provide the necessary level of privacy - their wall is only 1.2 meters high. In this regard, the Committee for the Prevention of Torture had recommended toilets with full partition (to the ceiling).<sup>68</sup> In 2019, the NPM established that the administration had tried to build partitions of the bathrooms to the ceiling in three cells, but this was later considered unsuccessful as it blocked visibility to some of the beds.<sup>69</sup> In the same report, the NPM also established overcrowding in the detention center on Major Vekilski Street, where 87 people were accommodated at a capacity of 80 places on the day of the visit. In addition, the buildings in this detention facility are in poor condition and the windows need to be widened to provide normal access to daylight.<sup>70</sup>

To summarise, the problems related to the conditions in the IDFs reveal that in most cells of IDFs located outside of prison premises, there is limited access of natural light as they do not have external windows. One of the IDFs (Gabrovo) is located underground, but continues to be in operation. In most of the old IDFs the cells are poorly ventilated. Four of them have no facilities for outdoor exercise; outdoor stay, therefore, is not provided. Seven IDFs provide such sites for indoor exercise only using unoccupied cells. In 11 of the IDFs, the cells have no toilets, use a shared lavatory, and outside the access regime, the detainees have to specifically ask to a toilet outside of the cell. The detention regime in IDFs is extremely restrictive, including accommodation in permanently locked rooms for 23 hours a day, except for one-hour outdoor stay. Pre-trial detainees do not have access to work, education, qualification, sports or other meaningful activities outside the cell. It is therefore necessary to align the regime of non-convicted prisoners with that of convicted prisoners.

## 10. Protection from Discrimination

In 2019, the case-law under the Protection against Discrimination Act (PADA) and other laws regulating equality of treatment continued to make progress in terms of protecting people with disabilities, but there are still vicious practices when it comes to understanding and applying the anti-discrimination law. The Supreme Administrative Court is the cassation instance on the decisions of the administrative courts, which rule on appeals against decisions of the national equality body, the Commission for Protection against Discrimination (CPD). The Supreme Court of Cassation is the cassation instance for cases filed under the PADA before the district courts.

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<sup>68</sup> 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, § 76, published on 25 September 2017, available in Bulgarian at: <https://rm.coe.int/16807c4b74>.

<sup>69</sup> Ombudsman of the Republic of Bulgaria (2019). *Report of the National Preventive Mechanism on the inspections of Directorate General of Execution of Sentences; Sofia Prison, Kremikovtiski and Kazhichene Hostels; the investigation detention facilities at G.M. Dimitrov Boulevard and Major Vekilski Street*, p. 33, available in Bulgarian at: <https://www.ombudsman.bg/pictures/file/Проверка%20ГДИН%202019.pdf>.

<sup>70</sup> *Ibid.*, p. 35.

## Selected case-law

In March, the Supreme Court of Cassation ruled that legal entities, and in that particular case — the religious institution the Jehovah's Witnesses in Bulgaria — could claim non-pecuniary damages for insulting and defamatory allegations.<sup>71</sup>

In a case concerning the pardon procedure, the Varna Regional Court<sup>72</sup> ruled that the provisions of Article 103 of the Constitution regulating the functional immunity of the head of state is not an obstacle for him to be a defendant in cases of protection against discrimination, as far as it is theoretically possible for him to refuse to exercise his right to pardon due to discrimination based on a protected ground.

As a court of last instance, the Supreme Court of Cassation annulled<sup>73</sup> the decisions of two lower courts that had established victimization within the meaning of the PADA by an influential journalist against a BHC activist. The case was initiated in connection with a 20-minute segment of a TV show in which the journalist, who invited two other public figures against whom the human rights activist and the BHC had in the past filed lawsuits, to discuss the activist's personality and sexual orientation.

The Sofia City Court upheld a first-instance decision rejecting claims for protection against discrimination by a Roma activist against the Blitz news website for not removing anti-Roma comments from users under a news publication. The court found that discrimination in the form of harassment can only take place when the perpetrator's unwanted conduct is directed at a specific person and the expression of an opinion or negative assessment of a whole ethnic group as part of society cannot be considered discrimination against individual members of the ethnic group. In addition, the court found the above comments to express a negative attitude not towards the entire Roma ethnic group to which the plaintiff belongs, but towards the section of the Roma ethnic group, which carries out criminal activity. The last court instance in the case, the Supreme Court of Cassation, refused to admit the case to cassation and accepted the motives of the second-instance court.<sup>74</sup>

The Pazarjik District Court ruled on a lawsuit filed by the BHC and the international organization European Roma Rights Center (ERRC) against the hospital in Pazarjik on account of racial segregation in the obstetrics and gynecology ward of the hospital in the period 2012 – 2013, expressed in placing Roma mothers in separate premises from the premises in which mothers of Bulgarian ethnicity were placed. At the request of the plaintiffs in the case, documents were presented of all accommodated patients for this period. The room number where the patient is placed is written in the top right corner of the forms and the patient's

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<sup>71</sup> Supreme Court of Cassation (2019). Decision № 274 of 18.03.2019 on civil case № 5120/2017, civil association, 4th civil division.

<sup>72</sup> Varna Regional Court (2019). Decision № 1335 of 15.11.2019 on civil case № 1851/2019, civil division, 1st panel.

<sup>73</sup> Supreme Court of Cassation (2019). Decision № 263 of 29.11.2019 on civil case № 1177/2019, civil association, 4th civil division.

<sup>74</sup> Supreme Court of Cassation (2019). Ruling № 819 of 29.11.2019 on a civil case № 2596/2019 of the 3rd civil division.

address is written at the bottom of the form. The plaintiffs claim that in view of the fact that the Roma neighborhoods are segregated in all settlements in Bulgaria, including the regions served by the regional hospital, it is possible to establish from the address of the patients recorded in the documents whether they live in such a neighborhood and, respectively, whether they are of Roma origin, and by the number of the rooms in which they were accommodated during their stay in the hospital — whether they were physically separated from the women of Bulgarian origin. However, the district court ruled that the facts had not been established in a definite manner and therefore dismissed the claims. The court of second instance, the Pazarjik District Court, acknowledged,<sup>75</sup> that the plaintiffs had proved facts from which discrimination can be presumed, but in so far as the defendant disputed this, the burden of proof fell entirely on the plaintiff.

The Supreme Court of Cassation ruled<sup>76</sup> in the case of two Roma activists against the chairman of an ultranationalist party and MP in the 43rd National Assembly Valeri Simeonov for his statements during a plenary session of the parliament in 2014, calling the Roma dishonest, primitive, criminals who parasitize, exploit for selfish purposes their children, a “ferocious mob,” “semi-literate voters,” and attributed “street bitch instincts” to Roma women. A request was made for a preliminary ruling from the Supreme Court of Cassation to the Court of Justice of the European Union (CJEU) to interpret the concept of harassment as a form of discrimination. The Supreme Court of Cassation dismissed the request for a reference for a preliminary ruling, as “the question formulated by the cassators does not concern the finding of a contradiction between national law and norms of European law or their validity.” The Supreme Court of Cassation ruled that to establish harassment, the unwanted conduct aimed at harming the object of discrimination and the creation of a negative environment must be cumulatively proven. This environment as a type of society should have a “specifically distinct topography” — a private or commercial property, workplace, institution, university, school, religious temple, home, etc. The facts on the basis of which an assumption can be made for the creation of such an environment can be very different, and may have taken place in the life and social contacts, at work, on holiday, etc. of the affected persons — e.g. refusal to hire the person for a job or to rent accommodation to them, neglect of access and service in public places, specific threats made at the place of residence or place of work and the like, caused by the alleged unwanted behavior of the perpetrator. The Supreme Court of Cassation notes that the defendant’s statement was not addressed personally to the plaintiffs because it did not address them personally — although they belonged to the Roma ethnic group, the plaintiffs did not fall within the part of it to which the statement referred.

The Sofia City Court overturned a decision of the Sofia District Court,<sup>77</sup> finding that the conduct of a religious activist from the Bulgarian Orthodox Church who had motivated third parties to obstruct the actions of the plaintiffs, followers of the Hindu mystic Sri Chinmoy, as well as to restrict their indoor gatherings, constituted acts of discrimination on the grounds of “convictions” by incitement. According to the second instance, which did not find discrimination, “in order to establish the conduct of a person inciting discrimination, it is

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<sup>75</sup> Pazarjik Regional Court (2019). Decision № 233 of 25.06.2019 on civil case № 315/2019

<sup>76</sup> Supreme Court of Cassation (2019). Decision № 2 of 19.06.2019 on civil case № 3203/2018, civil association, 3rd civil division.

<sup>77</sup> Sofia City Court (2019). Decision № 553 of 24.01.2019 on appellate civil case № 16814/2017, civil division, III-B panel.



necessary to prove the instigator's intent to motivate or encourage the instigator's decision to commit a specific discriminatory act, which does not necessarily mean that the discriminatory act was committed on the grounds of incitement to discrimination." The Sofia City Court held that, in order to establish incitement to discrimination, it was "necessary for the applicants to establish that there was unequal treatment of each of them individually compared to other third parties in a similar situation."

## 11. Right to Asylum and International Protection

### Access to International Protection

#### *Access to Territory*

The practice of physical violence, illegal appropriation of money and personal belongings and degrading treatment against migrants along the main border entry point with Turkey continued. During the year, the national border monitoring registered 337 incidents connected with alleged pushbacks in relation to 5,640 individuals.

According to data from the Turkish authorities,<sup>78</sup> 90,000 foreigners were prevented from entering Bulgaria and Greece during the first nine months of 2019. At the same time, Ministry of Interior statistics for 2019 reveals that only 2,184 foreigners entered the country, which is a 23,4% reduction in comparison to 2018.<sup>79</sup> In 2019, the share of individuals detained inside the country and on exit grew to 78% of all illegal foreigners. This reveals that on entry, whether intentionally or not, the police apprehend only 22% of them. Foreigners also confirm that they easily overcome the wall at the Bulgarian-Turkish border, the construction of which cost the Bulgarian taxpayers nearly BGN 200 million (EUR 100 million).

Other available information also corroborates the fact that that foreigners enter, pass and leave Bulgaria without any problems - in Serbia,<sup>80</sup> nearly 10,000 out of 40,000 foreigners in 2019 are believed to have entered from Bulgaria. The data in Romania<sup>81</sup> exceeds the figures reported by the Bulgarian authorities by 41%.<sup>82</sup> An analysis of these statistics shows that the Bulgarian government deliberately fails to detect between 10,000 and 15,000 foreigners a year in order to avoid liability for their admission or readmission. As a result of this strategy, the official statistics on foreigners entering the country are the lowest<sup>83</sup> since the first major influx in 2013.

#### *Access to Procedure*

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<sup>78</sup> *Over 90,000 irregular migrants held in northwest Turkey*, Anadolu Agency, published on 24 October 2019, available at: <https://www.aa.com.tr/en/turkey/over-90-000-irregular-migrants-held-in-northwest-turkey/1624380>.

<sup>79</sup> In 2018, 689 foreigners were detained on entry; their number in 2017 was 743.

<sup>80</sup> *3,500 migrants currently living in Serbia*, ANSA/InfoMigrants, published on 9 July 2019, available at: <https://www.infomigrants.net/en/post/18046/3-500-migrants-currently-living-in-serbia>.

<sup>81</sup> IOM data available at: <https://migration.iom.int/europe?type=arrivals>.

<sup>82</sup> *Information sheet on the migration situation in Bulgaria*, Ministry of Interior, published in 2019, available at: <https://www.mvr.bg/министерството/programni-dokumenti-otcheti-analizi/statistika/migracionna-statistika> (in Bulgarian).

<sup>83</sup> *Ibid.*

In 2019, the State Agency for Refugees (SAR) registered 2,152 asylum seekers - a 15% decrease in comparison to 2018.<sup>84</sup> The delay in registration increased by four days and the average duration of police detention increased to 12 calendar (or 10 working) days. The main reason behind this was the immigration police's attempt to improve their return statistics in dubious ways by illegally detaining first applicants who have valid documents and can easily be deported. In 2019, this escalated to the deportation of four asylum seekers even before the start or end of their refugee procedures. This, as well as the return by the bodies of the General Directorate of Border Police in Turkey of two other asylum seekers who appeared at the SAR Registration and Admission Centre in the town of Harmanli, constituted the most drastic violation of the principle of non-refoulement in the last decade.

#### *Detention during Proceedings*

Since 2015, a total of 32 asylum seekers were detained in a closed centre during their refugee proceedings. In 2019, the duration of detention during asylum proceeding lasted on average 109 days.

### **Quality of the Asylum Procedure**

#### *Recognition rate*

Despite the insignificant number of asylum applications during the year, the recognition rate in Bulgaria continued to be among the lowest in the EU – 11%. Subsidiary protection fell to 19% of the taken decisions, marking an overall protection rating of 30%. One of the most controversial practices in 2019 was the possibility of directors of reception centres to control the decisions to grant or refuse status proposed by the case workers. This raises serious concerns about the transparency and impartiality of the procedure and possible corrupt practices that deviate from protection standards.

#### *Legal aid*

In 2019, the National Legal Aid Bureau provided legal aid to 507 vulnerable asylum seekers.

### **Reception Conditions**

#### *Accommodation of unaccompanied minors*

The situation of unaccompanied children improved significantly 2019 with the opening of the first "safe zone" for unaccompanied migrant children on the territory of the Voenna Rampa Refugee Centre in Sofia in the middle of the year. Cases, however, in which unaccompanied children were accommodated in other refugee centres in mixed dormitories with adults continued. For the time being, there is no clarity on how the government will ensure the functioning of the "safe zones" after the end of the Asylum Migration and Integration Fund-funded project at the end of the year.

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<sup>84</sup> 2,536 foreign nationals registered as asylum seekers in 2018.

## **Integration of Recognized Refugees**

### *Suspension of protection*

For two years now, the State Agency for Refugees has been terminating granted refugee statuses, which it considers to have returned to the country of origin, on the legal basis of a non-renewed identity document. However, many of the refugees have actually left for other European countries, which makes the termination of their status illegal and in violation of the Geneva Convention and domestic law. This practice has so far affected a total of 4,148 people with recognized status - 770 refugees in 2018 and another 2,608 refugees in 2019 (of which 1,981 Syrian refugees, 267 stateless persons, 177 Iraqi refugees, 81 Afghan refugees and 102 refugees of other nationalities).

No integration measures or activities were available to recognized refugees or foreigners with humanitarian status. Thus, the situation of zero integration of refugees in Bulgaria continues for the sixth consecutive year.

## **12. Rights of People with Mental Disabilities**

The year began with the entry into force of the Rights of Persons with Disabilities Act and ended with the postponement of the entry into force of the Social Services Act. The latter was supposed to become effective on 1 January 2020, but on 27 December 2019 its enforcement was postponed until 1 July 2020. The change was accompanied by a request from the Minister of Labour and Social Policy for its revision. Although the closure of large specialized institutions for adults with mental disorders is underway, in 2019 we saw a serious departure from the concept of reform through the reintegration of people with disabilities. The stated intention in the new legal framework for deinstitutionalization of adults is to repeat the model of deinstitutionalization for children, but instead of returning to the community we are witnessing a return to the model of institutional care, supported by significant resources provided by European funds.

### **The Situation in Figures**

According to data from the Social Assistance Agency,<sup>85</sup> by the end of the year a total of 161 specialised institutions for adults were in operation with 10,041 individuals accommodated in them. Eighty-two of them are institutions for senior citizens.

There are 40 specialized institutions for adults with mental disabilities - 27 for adults with developmental disabilities and 13 for adults with mental disorders. There is a waiting list for accommodation in institutions with 2,468 people, of which almost half (1,177) are for accommodation in homes for senior citizens. The community-based social services for adults number 239, including: day care centers for people with disabilities - 79; weekly care centers for people with disabilities - 5; day care centers for senior citizens - 43; centers for social

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<sup>85</sup> The data was provided to the BHC by the Social Assistance Agency under a request for access to public information from January 2020.

rehabilitation and integration - 112. There are 320 community-based social resident services for adults, which include: sheltered housing for people with mental disorders - 27; sheltered housing for people with developmental disabilities - 87; sheltered housing for persons with physical disabilities - 13; supported housing - 20; transitional housing - nine, family-type accommodation centers for young people with disabilities - 12, for persons with mental disorders - 42 and for persons with dementia - 23; family-type accommodation centers for persons with developmental disabilities - 41, for persons with physical disabilities - 22 and for senior citizens - six; crisis centres - 6; temporary accommodation centers - 12; shelters - two. The number of people on the waiting list for accommodation in community-based residential services is 1,951. The clients in 127 sheltered housing facilities are 981, with the largest share being that of adults with intellectual disabilities - 665.

Sixty-one clients were accommodated in 20 supported housing facilities and 74 in nine transitional houses. 1,852 clients were accommodated in 146 family-type small group homes for adults, 12 of them for young people with disabilities (with a total of 150 clients). Thirty-seven adults were accommodated in six crisis centers for adults, 12 centers for temporary accommodation housed 544 clients, and 56 people were accommodated in two shelters. In 2019, 13 new community-based social services of residential type were opened - of which one sheltered housing and 12 family-type small group homes. In 2019, 12 new community-based supporting services were opened - 12 centres for social rehabilitations and integration and five daycare centers for people with disabilities. According to data from the Social Assistance Agency, the number of users of community-based social services is as follows: 84 daycare centres for adults with disabilities have 2,096 clients; 43 daycare centres for the elderly - 1,001; and 5,019 clients used short-term hourly services in 112 centres for social integration and rehabilitation.

### **Reform of Long-term Care**

In March 2019, the Permanent Expert Working Group for Supporting the Coordination of the Implementation of 2018-2021 Action Plan for the Implementation of the National Strategy for Long-Term Care at the Ministry of Labour and Social Policy (MLSP) settled the format for the report for review of the implementation of the 2018 Action Plan. In October 2019, the permanent expert working group was given a mandate to support the development and coordination and the next action plans for the implementation of the National Strategy for Long-Term Care. The MLSP working group continues to take decisions to build more buildings for adults with disabilities. At its latest meeting on 17 January 2020, updates of the Map of Resident Services and the Map of Community Support Services to the 2018-2021 Action Plan for the implementation of the National Strategy for Long-Term Care and the forthcoming tasks of the permanent expert working group were presented that are relevant to the development of the Human Resources Development Operational Program for the next programming period.

### **Still No Access to State Psychiatric Institutions**

Although in 2019, the BHC sent a letter to the Minister of Health motivating the need for systematic human rights monitoring in closed institutions for people with mental illness, the

organisation's access to this very vulnerable group – people with mental illnesses and in particular those placed in state psychiatric hospitals, received a tacit refusal.

By the end of 2019, the BHC did not receive a response to its next letter to the Minister of Health for access to psychiatric hospitals. The new request was sent to the Ministry of Health during the historic judgment of the ECtHR in the case of *Szurovecz v. Hungary* (application No. 15428/16) of 8 October 2019 concerning access to closed institutions. In this case, the ECtHR found that Hungary had violated the right to freedom of expression under Article 10 of the European Convention on Human Rights due to the refusal of the Hungarian authorities to grant a journalist access to Debrecen Migrant Reception Centre.

### **13. Women's Rights**

#### **Violence Against Women, Domestic Violence**

The state of women's rights continued to be worrying in 2019. Amendments to the Criminal Code provided heavier penalties for certain crimes if they are committed in the context of domestic violence - murder and threat of murder, bodily injury and others, but only on the condition that the violence is systematic. This condition exposes victims to serious risks and limits the application of the provision.

Stalking and forced marital cohabitation were also criminalized. The nature of the crimes related to causing moderate bodily injury by a close relative under Article 129 of the Criminal Code – was also changed from crimes of a private nature to crimes of a general nature; however, the criminal proceedings have to be initiated by the victim. The law, therefore, continues to treat domestic violence as a private problem, in which the state should intervene only at the request of the victim.

Despite the high public interest at stake, the prosecutor's office does not collect information on the initiated inspections and cases on the newly-introduced in the Criminal Code crimes related to domestic violence and violence against women.

The UN Special Rapporteur on Violence against Women, who visited Bulgaria in 2019, commented on the problems in criminal law reform and recommended that they are eliminated. She also drew attention to the need to implement other emergency measures, including:

- building more shelters and ensuring adequate state funding for their functioning;
- inclusion of the topics of women's rights and violence against women, sexual and reproductive rights in the school curriculum;
- establishing a national body responsible for the policies and measures to prevent and combat all forms of violence against women;

- collection of data on violence against women.<sup>86</sup>
- During the past year, similar recommendations to Bulgaria were put forward by the UN Committee on Economic, Social and Cultural Rights.<sup>87</sup>

Ministry of Interior statistical data for 2019 reveals that the number of issued orders for immediate protection from domestic violence under the Protection Against Domestic Violence Act has increased fourfold compared to 2018.<sup>88</sup> In 2018, there were 601 such orders, while their number in 2019 was 2,338. The statistical data of the Supreme Judicial Council reveals that nearly 50% of all cases under the Protection Against Domestic Violence Act are not decided on the merits but are terminated on other grounds. A non-exhaustive review of the case-law shows that the main reason for termination of the cases is the withdrawal of victims' applications.

## Gender Equality

The Gender Equality Index of the World Economic Forum published in late 2019, reveals a negative trend towards deepening inequalities between men and women in Bulgaria. In two years, Bulgaria fell 31 places behind in the index - from 18th to 49th place.<sup>89</sup> The UN Committee on Economic, Social and Cultural Rights<sup>90</sup> reported that women in Bulgaria continue to bear a disproportionate burden of unpaid domestic and care work, have a lower level of participation in the labour market and receive lower pay than men.

## Reproductive Rights

In 2019, there were calls to restrict women's reproductive rights, including a ban on abortions. The Bulgarian Orthodox Church expressed a position on the ban of abortions and on sexual education for children, and the Ataka party, which is part of the government, said that they are starting work on the Law on the Right to Life of Conceived Children. At the same time, the data from a nationally representative sociological survey showed that 89.5% of Bulgarians support the right to planned legal abortion.<sup>91</sup>

## Rights of Women During Childbirth

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<sup>86</sup> Official visit to Bulgaria, 14-21 October 2019 by the United Nations Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, Press release, 21 October, Sofia, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25173&LangID=E>.

<sup>87</sup> UN Committee on Economic, Social and Cultural Rights (2019), Concluding Observations on the Sixth Periodic Report of Bulgaria, paras. 31-32, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGR%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGR%2fCO%2f6&Lang=en)

<sup>88</sup> Ministry of Interior, information received under the Access to Public Information Act.

<sup>89</sup> World Economic Forum (2019), Global Gender Gap Report.

<sup>90</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGR%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fBGR%2fCO%2f6&Lang=en)

<sup>91</sup> Bulgarian Fund for Women (2019), National Representative Survey by Alpha Research, *Public Attitudes to Abortions in Bulgaria*, available at: [https://bgfundforwomen.org/wp-content/uploads/2019/09/Obshtestveni\\_naglasi\\_za\\_i\\_protiv\\_abortite\\_v\\_BG.pdf](https://bgfundforwomen.org/wp-content/uploads/2019/09/Obshtestveni_naglasi_za_i_protiv_abortite_v_BG.pdf).

On 11 July 2019, the UN Special Rapporteur on Violence against Women Dubravka Simonovic published a report<sup>92</sup> on human rights violations and violence in obstetrics and gynecology. Along with globally recognized issues, the document formulates new definitions of violence against women in childbirth. These include the routine (i.e. without medical indication) use of Oxytocin to induce contractions and labour, as well as performing a Caesarean section or other interventions without a proven medical need. The Kristeller manoeuvre, as well as performance of painful manipulations such as stitching after birth without anaesthesia, are also defined as violence against the mother.

At the same time, the data from the National Health Insurance Fund<sup>93</sup> revealed that 25,934 (or 47.3%) out of 54,820 births paid by the health insurance fund in 2019 were performed with C-section, at a medically justified level of up to 20%. This means that at least one-fourth of all women who gave birth during 2019 were subject to activities that are classified as violence.

#### **14. Rights of Children in Institutions**

The Social Services Act was supposed to enter into force on 1 January 2020, but just a few days before the end of the year its entry was postponed and its content planned for revision. The Rights of the Child Act, which was also supposed to be part of the package of laws reforming social policy, is also still not a fact. This is just part of the legal framework on the basis of which the state continues its attempts to continue the reform of children and young people from the institutions in a direction that safeguards their rights. Unfortunately, this did not take place in 2019.

#### **The Situation in Figures**

As of November 2019, there were 21 children's institutions in the country - 13 homes for medical and social care of children aged 0 to 3<sup>94</sup> and eight homes for children deprived of parental care.<sup>95</sup> A total of 480 children were accommodated in them: 84 children are placed in homes for children deprived of parental care (48 children aged 7-15 years and 36 - aged 16-18). 396 children were living in homes for medical and social care of children, according to data from the Social Assistance Agency. According to Ministry of Health data, as of 31

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<sup>92</sup> Simonovic, Dubravka. UN Human Rights Council, Special Rapporteur on Violence against Women, A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence. Available at: <https://digitallibrary.un.org/record/3823698?ln=en&fbclid=IwAR3COAA0-SSjqvZuGkO15yQx7RCWDJmD7TAW4GTdUBWrygT5T6y8PXbv9Sk>

<sup>93</sup> Information provided by the National Health Insurance Fund under a request for access to public information.

<sup>94</sup> Homes for medical and social care of children function under the provisions of the Health Establishments Act and are under the jurisdiction of the Ministry of Health. According to information provided by the Ministry, the Vidin institution was closed down on 5 December 2019, effective as of 1 January 2020.

<sup>95</sup> According to data from the Social Assistance Agency.

December 2019, 426 children were placed in residential care in 12 homes for medical and social care (no children were placed in residential care in the Vidin institution). The Social Assistance Agency does not maintain a database for newly-accommodated children in institutions for 2019, as well as for those coming into institutions from a family environment. Placements in homes for children deprived of parental care were suspended with an order of the executive director of the Social Assistance Agency on 9 March 2018. Placements in homes for medical and social care were suspended by an order of the same body from 9 May 2018, which stops the placement of children up to 3 years of age without disabilities. In 2019, five homes for children deprived of parental care were closed in the municipalities of Ispirih, Gotse Delchev, Plovdiv (2 institutions) and in Varna. During the same period, the institution in Yambol was closed, and on 5 December 2019, the institution in Vidin was closed, effective as of 1 January 2020.

Ministry of Health statistics<sup>96</sup> reveal that 406, or 95%, of the 426 accommodated children have disabilities. Healthy children are still accommodated in the homes for medical and social care, although their number has decreased by half - from 45 in early 2019 to 20 at the end of the year. Irrespective of the measures in the Updated Action Plan for closing the entrance to the homes for medical and social care for children without disabilities under 3 years of age, in 2019, 225 children were admitted to this type of institution - 45 of them healthy.<sup>97</sup>

There are 256 children up to three years of age - 237 of them have special needs; 170 children are over the age of three - 169 of them have special needs. The largest children's institution is the one in Stara Zagora, where 94% of the children have special needs. The institution in Pleven, where all but one of the children have special needs, is the second largest. Eighty-nine percent of the children in the Burgas institution have special needs, 82% - in Sliven, and 98% in Sofia.

### **What is the conclusion after more than a decade of reform in the care for children with disabilities<sup>98</sup>**

In 2019, the Court of Auditors published its final report no. 1000100416 on the audit of compliance implementation of the Action Plan with the Vision for Deinstitutionalization Vision for the period 2009-2015. The report identifies a number of issues that shed light on the mechanism through which the initial idea has been replaced over the years. One of the problems lies in the way in which the goal of the deinstitutionalization process was set. The adopted political documents assume that deinstitutionalization equals closure of large specialized institutions. From this point of view, the process of deinstitutionalisation for children is successful, especially owing to the serious investments from European funds, which made possible the construction of new buildings and ensuring the start of operation of these services.<sup>99</sup> This process, however, had to be combined with the adoption of new legislation that provided the necessary legislative framework for the changes and to ensure the legal sustainability of the process.

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<sup>96</sup> Information provided by the Ministry of Health to Coalition 2025.

<sup>97</sup> *Ibid.*

<sup>98</sup> The analysis was authored by Aneta Genova, independent expert.

<sup>99</sup> The audit report is available at: <https://www.bulnao.government.bg/bg/search/download/12630/od-deinst-deca-070819.pdf>.



The Court of Auditor's audit identified yet another serious problem: the lack of an impact assessment of the services and the introduction of a system of indicators. The process of closing down large specialized institutions did take place (with the exception mentioned above). But with the relocation of children with disabilities to the new services, the model of institutional care was also transferred. The large buildings and the large number of children or adults living in one place did undergo a transformation in the years of reform. However, the fact that children and adults continue to be accommodated, albeit in smaller, newer and significantly better buildings, in "family-type" centres, has not led to a change in their isolation. The state will continue to build group homes - this will be the way out for the children from 12 homes for medical and social care that will be closed by 2025.

The Ministry of Health envisages that the freed financial resources and staff will be redirected to the opening of centres for services for children with disabilities and chronic diseases in each district. The pilot centre with this profile was opened in December 2018 in Silistra. Under the Growing Regions Operational Programme (2014-2020), the Ministry of Health will also build infrastructure for community-based residential integrated health and social services. The building of 26 integrated centres is foreseen - 20 centres for specialized health and social care for children with disabilities in need of round-the-clock medical care and six centres for specialized health and social care for children with high risk behaviour and need for specialized health care.

### **No Access to the Homes for Medical and Social Care of Children**

In spite of the recommendation that institutions for vulnerable groups, in particular children, need to be open for independent inspections, in 2019 yet again the largest group of children's specialized institutions – that of the homes for medical and social care of children, remained far from the eyes of society. In 2019, the Ministry of Health again failed to grant access to the BHC to the institutions for children living in homes for medical and social care.

## **15. Rights of LGBTI People**

LGBTI people face social and legal obstacles and discrimination, which are not experienced by heterosexual and cisgender people.

### **Hate crimes and hate speech**

The current Criminal Code does not contain provisions on hate crimes for offenses committed on the grounds of sexual orientation, gender identity or gender expression of victims. There are no specific penalty enhancements for murder and infliction of bodily harm when motivated with sexual orientation, gender identity or expression of the victim.

Hate speech on the grounds of sexual orientation, gender identity or expression can be sanctioned only under the administrative or civil law procedure of the Protection against Discrimination Act (PADA), which implements the EU anti-discrimination directives.

### **Equality and non-discrimination**

The Constitution of the Republic of Bulgaria proclaims equality before the law and prohibits any restriction of citizens' rights or granting of privileges on the basis of exhaustively listed characteristics, but not on the basis of sexual orientation and gender identity or expression.

The Criminal Code still treats rape as an offense committed by a man against a woman specifically via penal-vaginal penetration. All other types of sexual coercion, including forced oral or anal penetration – whether with a penis, another body part or an object – are qualified as "fornication".<sup>100</sup> This leads to unequal punishment and leaves homosexuals without adequate legal protection from assault.

The Protection against Discrimination Act provides protection against discrimination based on sex, sexual orientation, and genome. The latter is important for many of the intersex conditions. However, gender identity or expression are not included among the protected grounds under the law. The ground "sex" is also protected, including in cases of "sex change." However, the term "sex change," mechanically adopted from Directive 2006/54/EC leaves room for a restrictive interpretation that recognizes protection only for postoperative transsexual persons.

### **Private and family life**

Bulgarian legislation provides only one option for officializing family relations between persons in a lasting relationship of intimacy and mutual care – marriage. Both the Constitution and the Family Code define marriage as a voluntary union between a man and a woman, which excludes same-sex marriages. The Bulgarian legal theory acknowledges the so-called factual cohabitation, and separate laws<sup>101</sup> and case-law, mainly of the former Supreme Court,<sup>102</sup> recognize its normative significance and, accordingly, limited legal consequences stemming out of it in the fields of civil and family law.

A same-sex marriage between two foreigners concluded under the law of a foreign state should be recognized by the Republic of Bulgaria. This is not applicable where one or both persons have Bulgarian citizenship.

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<sup>100</sup> Supreme Court of Cassation (2010). Judgment no. 122 from 25 March 2010 on criminal case no. 772/2009.

<sup>101</sup> For instance, Protection from Domestic Violence Act (prom. State Gazette, issue 27 from 29 March 2005).

<sup>102</sup> For instance, Supreme Court of the People's Republic of Bulgaria (1969). Resolution of the Plenum of the Supreme Court no. 5 from 24 November 1969 for supplementing point 2 of Section III of the resolution no. 4/1961 of the Plenum regarding the group of persons that are entitled to compensation for non-pecuniary damages in the event of death.

By law, a child can be adopted only by single persons (women or men) and couples who are married, i.e. necessarily a heterosexual couple. In vitro fertilization procedures are available both for married couples and for single women.

In July 2019, the Supreme Administrative Court ruled on the case on the refusal of the Migration Directorate at the Ministry of Interior to extend the long-term residence permit of an Australian citizen, the wife of a French national.<sup>103</sup> Referring to the judgment of the CJEU in the *Coman* case (C-673/16), the Sofia City Administrative Court annulled the MoI refusal and accepted that a third-country national leading a family life with a person of the same sex with whom they had a legal relationship in the host Member State marriage, has the right to reside in the territory of another Member State.<sup>104</sup> The Supreme Administrative Court upheld this ruling.

In August, the Sofia District Court delivered a judgment allowing a Bulgarian citizen married to another Bulgarian citizen under Danish law to take her partner's name as her surname.<sup>105</sup> According to the decision, the petitioner's right proceeds not from the consequences of the marriage, which cannot be recognized under Bulgarian law, but from the actual family life, which is an important circumstance within the meaning of Article 19, para. 1 of the Civil Registration Act.

In December, the Supreme Administrative Court upheld<sup>106</sup> a judgment of the Sofia City Administrative Court,<sup>107</sup> which turned down an application of a Bulgarian married to another Bulgarian in the Great Britain under British law. The applicant complains against the refusal of the mayor of Sofia's Lyulin district to record their marriage in her civil registration card. The Supreme Administrative Court confirmed that the two Bulgarian nationals had not entered into matrimony in Great Britain in line with the requirements of Bulgarian law.

### **Legal gender recognition**

There is an explicit legal prohibition of sex markers in official documents to be changed via an administrative procedure. The change could happen via court procedure for which fees are due, and the court panel forms an *ad hoc* procedure. What documents will be required by the court to establish the facts as well as what will the measures be in the court's judgment vary from case to case leaving trans persons in a great uncertainty in regards to costs and outcome of the court procedure. This also leads to inconsistent case-law.

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<sup>103</sup> Supreme Administrative Court (2019). Judgment no. 11351 from 24.07.2019 on admin. case. no. 11558/2018, 7th panel.

<sup>104</sup> Sofia City Administrative Court (2018). Judgment no. 4337 from 26.06.2018 on admin. case. no. 3500/2018 r., 15<sup>th</sup> panel.

<sup>105</sup> Sofia District Court (2019). Judgment no. 190925 from 13.08.2019 on civil case no. 24847/2019, 139<sup>th</sup> panel.

<sup>106</sup> Supreme Administrative Court (2019). Judgment no. 17003 from 12.12.2019 r. on admin. case. no. 4245/2018, 3<sup>rd</sup> panel.

<sup>107</sup> Sofia City Administrative Court (2018). Judgment no. 180 from 08.01.2018 r. on admin. case. no. 7538/2017, 58<sup>th</sup> panel.

In its recent case-law, the Supreme Court of Cassation ruled that *transgender persons could not be required to perform involuntary surgery* to modify their bodies as a condition for changing the gender entered in the birth certificate. At the same time, however, the court ruled that it was *necessary to have at least started hormone therapy for gender reassignment*.<sup>108</sup>

### **Freedom of assembly and freedom of expression**

The LGBTI community in Bulgaria enjoys, in principle, great freedom of assembly and association and freedom of expression.

On 8 June 2019, the twelfth Sofia Pride was held, which was attended by at least 6,500 people. The event was organized with the support of over 50 volunteers and included 35 sports, cultural and other events in the month preceding the march.

On the day of the Pride, two counter-demonstrations were held - "Protect our children from debauchery", organized by the neo-Nazi informal organization "National Resistance", and "Family March", organized by three conservative civil society organizations – Free Human Association (close to the Blagovestie Burgas Evangelical Church), the Choice for Life anti-abortionist association and the New Life Association (also a Christian organization).

### **Freedom of association and institutional support**

The interaction of state and municipal bodies with the LGBTI community and its non-governmental organizations and advocates in 2019 remained weak and formalistic. No LGBTI organization receives state or municipal funding. During the reporting period, in Bulgaria four legal entities were publicly active as LGBTI organizations: the Bilitis Resource Center Foundation, the LGBT Youth Association Deystvie, the GLAS Foundation and the Single Step Foundation.

The only progress was the accession of the Ministry of Foreign Affairs to the European Government Network of LGBTI Contact Points of the Council of Europe.

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<sup>108</sup> Supreme Court of Cassation (2017). Judgment no. 205 from 05.01.2017 on civil case no. 2180/2016, 3<sup>rd</sup> civil department and Supreme Court of Cassation (2017). Judgment no. 16 from 30.05.2017 on civil case no. 2316/2016, civil college, 4<sup>th</sup> section.