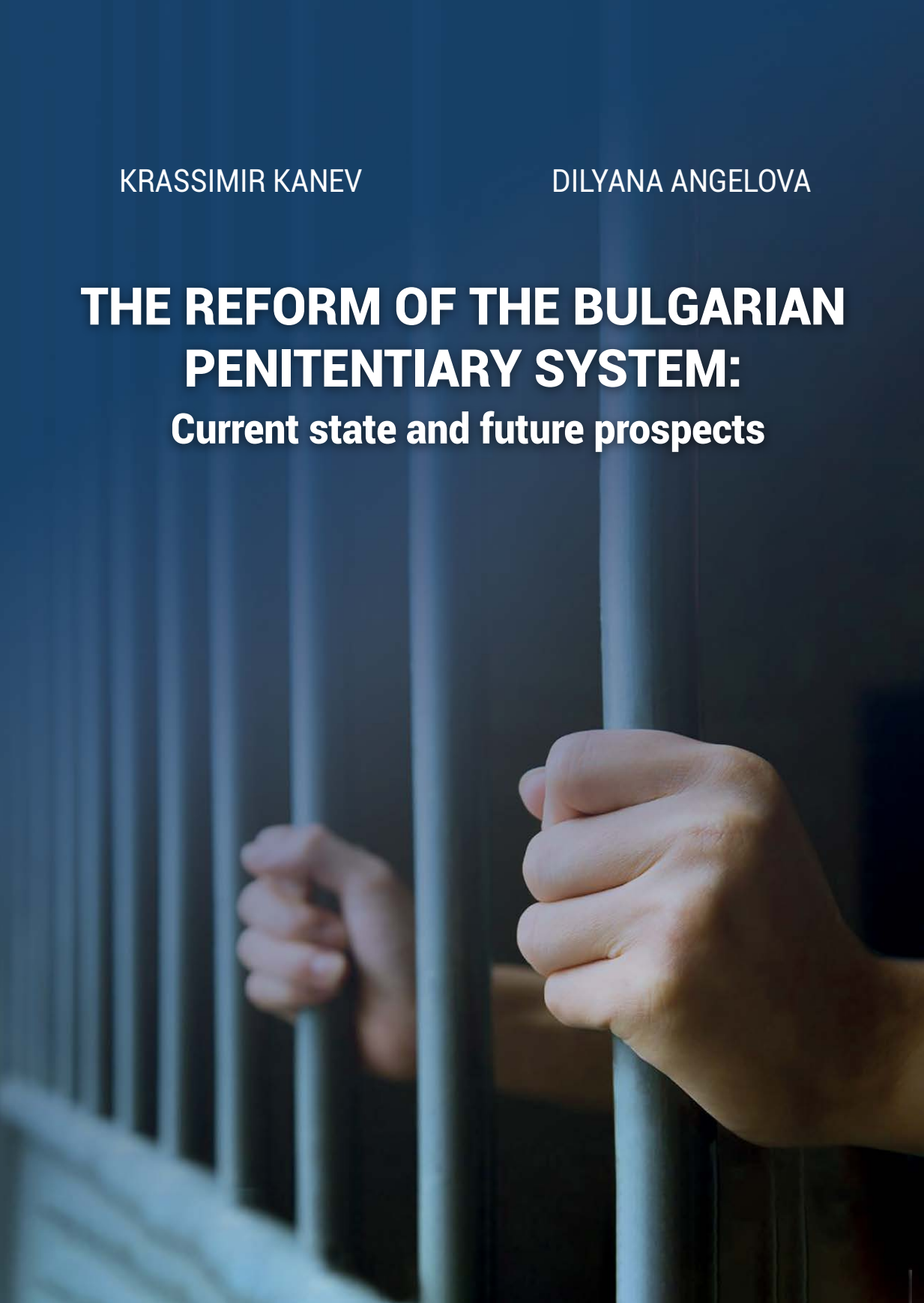


KRASSIMIR KANEV

DILYANA ANGELOVA

THE REFORM OF THE BULGARIAN PENITENTIARY SYSTEM:

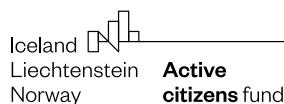
Current state and future prospects



KRASSIMIR KANEV

DILYANA ANGELOVA

THE REFORM OF THE BULGARIAN PENITENTIARY SYSTEM: Current state and future prospects



This study was carried out by the Bulgarian Helsinki Committee (BHC) under the project „Evaluation of the reform in places for deprivation of liberty in Bulgaria: Legislation and practice after the pilot judgment of the ECtHR Neshkov and Others.” The main goal of the project is to improve the implementation of international human rights standards in the penitentiary sphere in Bulgaria. More information on the project is available at www.prisonreform.bg.

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The Reform of The Bulgarian Penitentiary System: Current State and Future Prospects

Bulgarian

First edition

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ABBREVIATIONS

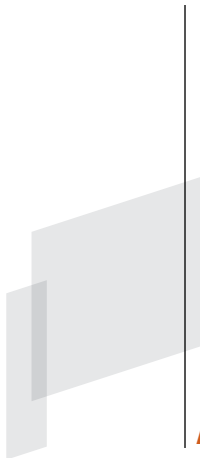
- APIA** – Access to Public Information Act
- BHC** – Bulgarian Helsinki Committee
- CAT** – Committee against Torture
- CERD** – Committee on the Elimination of Racial Discrimination
- CM** – Committee of Ministers
- CPC** – Criminal Procedure Code
- CPT** – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- CTPH** – Closed-type Prison Hostel
- EP** – European Parliament
- EU** – European Union
- GDEP** – General Directorate „Execution of Punishments”
- ECHR** – European Convention on Human Rights
- ECtHR** – European Court of Human Rights
- EPPDA** – Execution of Punishments and Pre-trial Detention Act
- EPR** – European Prison Rules
- ICTY** – International Criminal Tribunal for the Former Yugoslavia
- JCFB** – Juvenile correctional facility for boys
- JCFG** – Juvenile correctional facility for girls
- HRC** – Human Rights Committee
- HAS** – High security area
- NGO** – Non-governmental organisation
- NHIF** – National Health Insurance Fund
- NPM** – National Preventive Mechanism
- OPCAT** – Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- OSCE** – Organization for Security and Co-operation in Europe
- OTPH** – Open-type Prison Hostel
- PSF** – State-owned Enterprise Penal Service Fund
- REEPPDA** – Rules for the Enforcement of the Execution of Punishments and Pre-Trial Detention Act
- SHATP** – Specialized Hospital for Active Treatment of Prisoners
- SMR** – Standard Minimum Rules for the Treatment of Prisoners
- UN** – United Nations
- WMA** – World Medical Association

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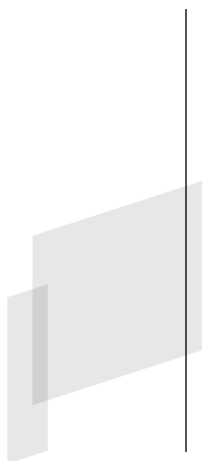


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The research is based on the contributions from the monitoring visits of the researchers of the Bulgarian Helsinki Committee **Slavka Kukova, Antoaneta Nenкова, Stanimir Petrov** and **Maria Yanakieva**.



INTRODUCTION

This research was carried out by the Bulgarian Helsinki Committee (BHC) under the project „Evaluation of the reform in places for deprivation of liberty in Bulgaria: Legislation and practice after the pilot judgment of the ECtHR “Neshkov and Others”, financed by the “Active Citizens Fund in Bulgaria” through the Financial Mechanism of the European Economic Area. The main goal of the project is to improve the implementation of international human rights standards in the penitentiary sphere in Bulgaria. The initiative is a continuation of BHC's work over many decades in the field of monitoring the conditions in closed institutions, advocacy for respecting the rights of prisoners and empowering vulnerable groups in Bulgaria. For its implementation, the BHC received support from the General Directorate “Execution of Punishments” (GDEP) and the ombudsman in her capacity of National Preventive Mechanism (NPM).

In 2015, the European Court of Human Rights (ECtHR, the Court) issued its pilot judgment in the case of Neshkov and Others v. Bulgaria. The Court found that overcrowding and poor material conditions in the Bulgarian prisons and pre-trial detention facilities lead to violations of Article 3 of the European Convention on Human Rights, which provides for an absolute ban on torture, inhuman and degrading treatment and punishment. In view of the repeated and long-lasting nature of the problems, the Court found that behind them are structural deficiencies penetrating the entire penitentiary system of Bulgaria. It gave a period of 18 months to the government to take complex measures to deal with them, including large-scale improvement of the material base, overcoming overcrowding and introducing effective preventive and compensatory remedies against such type of violations.

At around the same time, the ECtHR issued another key judgment relating to the criminal justice system in Bulgaria – *Harakchiev and Tolumov v. Bulgaria*. With this judgment the Court found a violation of Article 3 due to the cumulative effect of the conditions and the regime of detention, to which the two applicants were placed, sentenced respectively to life imprisonment without parole and life imprisonment with parole. The judgment ordered Bulgaria to reform the legal framework regulating the regime of serving the sentence of those convicted to life imprisonment with or without parole, more specifically with regard to the automatic application of the most restrictive regime and isolation to all persons on whom such penalties are imposed.

For implementation of the judgments of the ECtHR, in 2016 and 2017 the Bulgarian parliament adopted a number of amendments to the Execution of Punishments and Pre-Trial Detention Act (EPPDA) and the Criminal Procedure Code (CPC), the most important of which are the following:

- The wording of Article 3 of the EPPDA, establishing the ban of inhuman and degrading treatment, was improved.
- A standard was established for the minimum living space for one person in detention of not less than 4 sq. m.
- When choosing a specific prison for serving a sentence, except for the criterion of proximity of the prison to the prisoner's permanent address, it was agreed that the accommodation should take into consideration also the ability of the prison to provide decent material conditions.
- The range of convicted persons who may be accommodated initially in open-type prison hostel (OTPH) instead of closed-type prison hostel (CTPH) was broadened. The conditions for transfer from the CTPH to OTPH were also eased. Both amendments aimed mainly at overcoming overcrowding in prisons.
- Preventive and compensatory remedy were introduced against bad detention conditions. In both cases it is triggered through applications and claims to the administrative courts.
- Provision was made for the possibility of appeal of the acts of the bodies tasked with the execution of punishments before the administrative court at the place of the execution of the punishment in order to strengthen the independent control over the places for deprivation of liberty by the courts.
- Direct access of the prisoners to court for triggering the early release (parole) proceedings was introduced. The conditions for early release were also changed: after the amendments to the law, upon serving two

third of the sentence, the requirement was dropped the remainder of the sentence to be no more than three years for recidivists.

Along with the legislative amendments, many practical measures were undertaken to improve material conditions, including closure of unrepairable pre-trial detention facilities and prison hostels, opening of new penitentiary institutions, repair and expanding the capacity of existing institutions.

With this book an attempt has been made to examine and evaluate the effects of the practical and legislative measures taken by the government after the pilot judgment. These measures identify the deficits of the reform in the penitentiary system and outline the spheres in which it must be continued in order to implement the general measures stemming from the ECtHR judgments. The results of the study will be communicated to the national authorities and to the Committee of Ministers of the Council of Europe, which oversees the implementation of the judgments of the Strasbourg Court.

The book includes two parts:

- ***International standards and recommendations by international bodies regarding the rights of persons deprived of their liberty in criminal proceedings in Bulgaria;***
- ***Analysis of the changes in the places for deprivation of liberty after the pilot judgment of the ECtHR in the case „Neshkov and Others v. Bulgaria”.***

In the first part, a comprehensive overview is made of the international standards for treatment of prisoners, as well as the recommendations of international human rights bodies to Bulgaria. The review is focused on the standards formulated by the UN and the Council of Europe bodies. Such a presentation of international standards for treatment of prisoners is offered for the first time in Bulgaria. It gives a foundation for the evaluation of the results of the reform in the Bulgarian penitentiary system and at the same time serves as a guide for the authorities implementing criminal sanctions, the ombudsman and other independent monitors of human rights in the places for deprivation of liberty.

The second part presents the results of the research on the practical changes in the places for deprivation of liberty after the pilot judgment of the ECtHR in the case of *Neshkov and Others v. Bulgaria*, which gave rise to the reform of the penitentiary system.

The research presents a comprehensive picture of the state of the Bulgarian prisons and pre-trial detention facilities and the effectiveness of implemented measures for reducing overcrowding and improving detention condi-

tions. In addition, it outlines the problem areas and spheres in which the reform should continue.

The research is based on findings made in the course of 48 visits of BHC researchers to 41 penitentiary institutions – prisons, prison hostels, juvenile correctional facilities and pre-trial detention facilities. More specifically, BHC researchers visited all 12 prisons in Bulgaria, five CTPH, six OTPH, two juvenile correctional facilities and 16 pre-trial detention facilities. Visits to some of the institutions were repeated in order to obtain additional information or track progress.

The field research was conducted in the period February 2020 – March 2022. It coincided with the COVID-19 pandemic and in compliance with the strict measures to prevent the spread of the virus in the places of detention and restricted access to prisoners, the research team had to cancel planned visits several times, which led to the extension of the originally planned time-line of the research. The state of material conditions described in the study, is current at the time of the visits and does not reflect subsequent changes.

The visits to the pre-trial detention facilities were carried out mainly in 2020 and included 16 institutions out of the existing 27 at that time. The focus was on facilities placed in separate buildings, not those housed in the prisons or prison hostels, because of the traditionally worse conditions of detention in the separate facilities. Until the end of 2022, two of the detention facilities visited have been moved to new buildings – those in Dobrich and Blagoevgrad, and the detention centre in Gabrovo was closed.

Pre-trial detention facilities visited	Month and year of visit
Detention facility - Blagoevgrad	June 2020, March 2022
Detention facility - Varna	July 2020
Detention facility - Veliko Turnovo	August 2020
Detention facility - Vidin	July 2020
Detention facility - Vratsa	July 2020
Detention facility - Gabrovo	July 2020
Detention facility - Dobrich	August 2020
Detention facility - Silistra	August 2020
Detention facility - Kyustendil	February 2020
Detention facility - Plovdiv	June 2020
Detention facility - Ruse	August 2020
Detention facility - Svilengrad	June 2020
Detention facility – Sofia, Mr. Vekilski str.	October 2020
Detention facility – Sofia, G.M. Dimitrov Blvd.	September 2020
Detention facility - Haskovo	June 2020
Detention facility - Shumen	July 2020

The field research in the prisons was carried out in 2021 and in the beginning of 2022. All 12 prisons, five CTPH and six OTPH were visited. The prison hostels were selected to include newly opened penitentiaries, some completely renovated hostels and institutions for which there was information from previous visits and reports of other monitoring bodies that they were in poor conditions of detention. Both juvenile correctional facilities were visited, in which juveniles serve their prison sentences.

Prisons and prison hostels	Date of visit	Interviews with prisoners
Prison Bobov Dol	July 2021; March 2022	11
Prison Belene	August 2021	9
Prison Burgas	July 2021	11
CTPH Debelt	July 2021	6
OYPH Debelt	July 2021	2
Prison Varna	June 2021	9
CTPH Razdelna	February 2021; December 2021	16
Prison Vratsa	October 2021	10
JCFB Vratsa	October 2021	5
Prison Lovech	August 2021	6
CTPH Atlant	August 2021	11
Prison Pleven	November 2021	15
CTPH Vit	November 2021	1
Prison Plovdiv	June 2021	8
OTPH Hebros	June 2021	1
Prison Pazardzhik	June 2021	10
OTPH Pazardzhik	June 2021	8
Prison Stara Zagora	July 2021	6
CTPH Cherna Gora	October 2021	4
OTPH Vereya	July 2021	4
Prison Sofia	March 2021; October 2021; March 2022	22
CTPH Kremikovtsi	March 2021; June 2021; December 2021	13
Prison Sliven	August 2021	9
OTPH Ramanusha	August 2021	2
JCFG Sliven	August 2021	0
Total		199

For the purposes of the field monitoring, two protocols were drawn up - one for monitoring of the pre-trial detention facilities, and a second one for monitoring prisons, prison hostels and juvenile correctional facilities. Each one of them contains the aspects of conditions in places for deprivation of liberty which are subject to monitoring in accordance with international and national standards – number of prisoners, distribution by groups and overcrowding; material conditions; food; medical care; disciplinary practice; prisoners under strict regime; isolations; vulnerable groups of prisoners/detainees; use of preventive and compensatory remedy; contacts with the outside world; resocialization; cases of violence and their registration, etc.

During the field research to prisons and pretrial detention facilities visits were carried out in a team of two or three trained researchers and, in very rare cases, just for conducting some of the interviews – by one researcher. Research team's access to detention facilities was based on an agreement between the BHC and the Ministry of Justice from 1997. Under the agreement, the BHC experts are issued passes that guarantee them access without prior notice to all territorial divisions of the GDEP during the working hours of the administration. However, to ensure the smooth organization of the work necessary for carrying out the monitoring, some of the visits were notified to the respective prison authorities.

The pre-trial detention facilities are small institutions and in any case their monitoring took place within one day, while the work in the prisons took a longer time. Subject to monitoring were the conditions in the cells at the different floors of the institutions and with a different profile of the prisoners placed in them, sanitary facilities, places for outdoor exercise and sports facilities, meeting places, kitchens, dining areas, storage rooms, offices, libraries, group work rooms, medical offices, and in-patient facilities adjacent to them, workplaces, school buildings, etc.

In the prisons, prison hostels and juvenile correctional facilities, a total of 199 in-depth interviews were conducted with convicted prisoners, for which a special questionnaire was prepared. The interviews were conducted in private, without their contents becoming known to the prison staff, with all interviewees providing informed written consent to participate in the interview. Out of the total number of interviews, 11 were conducted with female prisoners, 10 – with foreign citizens, 10 – with life prisoners with or without the right to parole, 5 – with minor boys.

No interviews were conducted with detained persons in the pre-trial detention facilities because access for representatives of human rights organizations to the detained accused persons is possible only after the express per-

mission from the supervising prosecutor or judge.¹ This requirement impedes quality monitoring and investigation of conditions of detention in pre-trial detention facilities and should be repealed.

In all the institutions visited, the researchers conducted interviews with representatives of the administration – prison governors, guards on duty or other employees in management positions in pre-trial detention facilities, social work inspectors, psychologists, medical specialists, teachers, cooks, employees of the State-Owned Enterprise Penal Service Fund (PSF), etc. The total number of employees interviewed was over 50. A large amount of secondary information was also used for the research. First of all, during the field monitoring, where possible, documentation was reviewed, such as registers for traumatic injuries and for the use of force. Written and oral information was received on the number, distribution and movement of the prisoners, the number of students and working prisoners, the capacity of institutions, disciplinary practice and other relevant information.

Next, on the basis of the Access to Public Information Act (APIA) numerous reports, analyses, statistical data and other documents valuable for the purposes of the present study have been received from the of GDEP and its territorial divisions, which are not available anywhere in the public domain. On the same basis, information has also been requested and received from other state structures - the Ministry of Justice, the PSF, the National Revenue Agency, the Ministry of Education. This analysis integrates also data, which became known as a result of inspections following reports submitted by the BHC on violations of the rights of prisoners, for example inspections by the Executive Agency "Chief Labor Inspectorate" and of the Executive Agency „Medical Supervision."

An important source of information for the analysis of the situation in the places for deprivation of liberty is also the Ombudsman's reports in her capacity as NPM, the reports of the European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment (CPT), the part "Conditions in places for deprivation of liberty" from the annual reports of the BHC on human rights in Bulgaria and other specialized BHC research on problems of pre-trial detention facilities and prisons.

Another important source of information are complaints and communications, which the BHC receives daily from prisoners, as well as the communications on some of them with state institutions. The organization has collected a large archive of letters and communications concerning almost all prisons in Bulgaria. The information communicated by the prisoners in their letters, is subjected to a careful scrutiny during visits to the relevant institutions.

¹ EPPDA, Art. 253, § 3.

Finally, other publicly available sources, used in this research, are the reports of the Bulgarian government to the Committee of Ministers of the Council of Europe on implementation of the ECtHR judgments related to places for deprivation of liberty, the annual reports of the prosecution, the statistics of the National Statistical Institute, the annual prison statistics of the Council of Europe and the reports of other state institutions.

An electronic version of this book in Bulgarian and in English is available on the website of the project, www.prisonreform.bg, and on the website of the BHC www.bghelsinki.org.

PART I

**International standards and
recommendations by international
bodies, regarding the rights of persons
deprived of their liberty in criminal
proceedings in Bulgaria**



KEY CONCEPTS AND SUBJECT MATTER OF THE STUDY

The international law allows deprivation of a person of his/her liberty in several strictly defined situations. The European Convention on Human Rights (ECHR, the Convention) defines six such scenarios in Article 5:

1. Deprivation of liberty as a punishment following a conviction by a competent court;
2. Deprivation of liberty in order to secure the fulfilment of an order of a court or any obligation prescribed by law;
3. Deprivation of liberty for the purpose of bringing a person before a competent court on a reasonable suspicion for having committed a criminal offence, or the so called „pre-trial detention“;
4. Deprivation of liberty of a juvenile for the purpose of educational supervision or for bringing him/her before a competent legal authority;
5. Deprivation of liberty for the prevention of infectious diseases, of mentally ill, alcoholics or drug addicts, vagrants and homeless persons;
6. Deprivation of liberty for the purpose of immigration control or extradition.

The Convention does not allow deprivation of liberty on any other grounds. Out of the six scenarios, listed above, only two are associated with criminal proceedings – the first and the third. Those scenarios generate what is generally known and referred to in international and national documents as „prisoners“, i.e. persons placed in prisons – institutions where most often the punishment „deprivation of liberty“ is being executed. The term „prisoners“, as used in international documents, refers also to persons placed in institutions, whose

purpose is to execute the measure „pre-trial detention“ at the early stage of the pre-trial criminal proceedings (in Bulgaria they are known as „investigative detention facilities“ or „pre-trial detention facilities“, while their inhabitants are known as „arrestees“)². None of the other four categories of persons, who could be deprived of liberty, on the grounds of the listed scenarios, are referred to by the international standards as „prisoners“. The only exception is a small group of persons, detained in a prison for the purpose of extradition, i.e. when they are sought by another country in order to be prosecuted for having committed a criminal offense or to be imprisoned after conviction.

The Bulgarian Execution of Punishments and Pre-trial Detention Act (EP-PDA), which regulates, among other things, the deprivation of liberty as an outcome of criminal proceedings, uses the term „deprived of liberty“ when it refers to prisoners, and „places for deprivation of liberty“, when it refers to prisons, prison hostels, correctional facilities for minors and pre-trial detention facilities. Strictly speaking, the linguistic meaning of the above-mentioned terms is broader. „Deprivation of liberty“ is a generic term for each one of the six listed categories, just two of which are meant for the persons who are deprived of liberty in the context of criminal proceedings.

In addition to the term „deprivation of liberty“, the international standards use terms like „arrest“, „detention“, „detained“ and „arrested“. Overall, there is some jumble in the usage of these terms³. They can be used broadly and narrowly. In a broader sense „detention“ and „detained“ are used as synonyms of „deprivation of liberty“ and „deprived of liberty“ respectively. Following the same logic, prisoners could also be referred to as „detainees“, while the deprivation of liberty inside a prison can be referred to as „detention“. Therefore, we talk about „conditions of detention“ having in mind also the conditions in which the punishment „deprivation of liberty“ is being served. In a narrower sense, „detention“ is any restriction of the physical freedom of a person, unless it is a consequence of a conviction for a criminal offence, or an arrest. „Arrest“, when it is not being used as a synonym of „detention“, normally refers to the initial act of deprivation of liberty, through which a person is placed under physical control, usually of a law enforcement agent. The Bulgarian law uses the term „detention“ (задържане) to signify the deprivation of liberty within a pre-trial detention facility or a prison as a result of an order of a prosecutor for a 72-hour detention and the enforcement of the measure „pre-trial detention“, as well as the 24-hour police detention based on a suspicion that the person

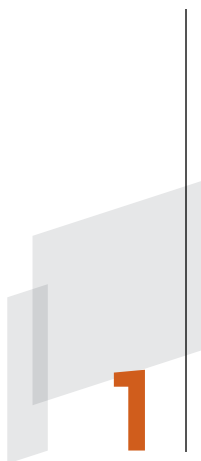
² „Investigative detention facilities“ is a term used by some European bodies, including the CPT and the ECtHR. It is not entirely correct. In this publication the term „pre-trial detention facilities“ is used as the more correct term, along with „investigative detention facilities“.

³ See: Kanev, K., *The Right to Liberty and Security of Person*, Sofia: Sibi, 2016, pp. 40 – 46 (in Bulgarian).

detained has committed a criminal offense. In the latter case it would be highly unlikely, according to the Bulgarian legal terminology, the „detained“ persons to be referred to as „prisoners“, although they are deprived of liberty in the context of proceedings that are in essence criminal.

This part of the study presents the international standards for treatment of the persons deprived of their liberty in criminal proceedings, as well as the recommendations to Bulgaria by the international bodies, regarding these persons' rights. These are the persons who are referred to as „prisoners“ and are deprived of liberty based on the first and the third scenarios listed above. Only in some marginal aspects does this study touch upon the persons, detained in the police stations for 24 hours, based on a suspicion for having committed a criminal offense. The same is true also for the institutions under the Ministry of Interior, where persons are held under Decree No. 904 on Combatting Petty Hooliganism, although according to the relevant international standards they also fall into to the group of institutions for deprivation of liberty in the context of criminal proceedings.

The study covers the sources of the international standards, their material scope and their content. It focuses on the standards, which were formulated within the framework of the bodies and institutions of the United Nations and the Council of Europe. Special emphasis is given to the case-law of the European Court of Human Rights (ECtHR, the Court). It is covered comprehensively, although priority is given to the key decisions against Bulgaria, as well as against other member states with similar subject matter. The recommendations towards Bulgaria by the international bodies on the rights of the persons deprived of their liberty in criminal proceedings, are from the last twelve years.



CHARACTER AND SOURCES OF THE STANDARDS FOR PROTECTION OF THE RIGHTS OF THE PERSONS, DEPRIVED OF THEIR LIBERTY IN CRIMINAL PROCEEDINGS AND THEIR MATERIAL SCOPE

The key distinction within the international standards in the area of human rights is between the legally-binding, or „hard“ standards and the so called „soft law“, which includes declarations, recommendations, resolutions of international bodies and institutions that are not legally binding⁴. The „hard“ standards are the norms of the international law. Article 38 from the *Statute of the International Court of Justice* provides for a comprehensive list of its sources, which are as follows: a) the international treaties; b) the international custom as evidence of a general practice, accepted as law; c) the general principles of law, recognized by civilized nations; d) the judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

1.1. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

The rights of prisoners include human rights. Therefore, all the norms of international human rights law are applicable to the situation of the persons, deprived of their liberty in criminal proceedings. Among all these norms special emphasis is placed on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The detained persons, including prisoners, are particularly vulnerable to these forms of ill treatment. The prohibition is provided for in a number of international treaties, to which Bulgaria is a par-

⁴ Some Bulgarian authors also refer to it as „flexible law“: Ilieva, I. *Soft Law of the International Organisations*, in Shopov, A (ed.). *Soft law and the contemporary law*. Sofia: Sibi, 2017 (in Bulgarian).

ty⁵. The prohibition of torture holds a special statute as a norm of international law. Under the treaty law, this prohibition, along with the prohibition of cruel, inhuman or degrading treatment or punishment, does not allow restrictions or derogations. In addition, the UN Committee against Torture (CAT) in its *General Comment No. 2* from January 2008, reiterated that the prohibition of torture is a norm of the customary international law⁶. Nowadays, it is widely accepted that the prohibition of torture is a peremptory norm of the general international law (*jus cogens*)⁷. This norm is of a higher rank compared to the ordinary norms of the treaty law and even compared to the norms of the customary international law. The UN Human Rights Committee (HRC) in its General Comment No. 24 from 1994, pointed out that the non-derogatory character of the prohibition of torture is due to its status as a peremptory norm of the general international law⁸. In the case of *The Prosecutor v. Anto Furundžija* (1998), the International Criminal Tribunal for the Former Yugoslavia (ICTY) ruled that the prohibition of torture „imposes upon States obligations *erga omnes*, that is, obligations owed towards all the other members of the international community, each of which then has a correlative right“⁹. In the international law, such an obligation is present whenever there is a universal and unequivocal interest in the protection of key human rights. The legal statute of the prohibition of cruel, inhuman or degrading treatment or punishment is lower than the statute of the prohibition of torture, however, since it is non-derogable, it still ranks higher than most of the other universal human rights¹⁰.

Because the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is of a peremptory character and the establishment of its breach results in a special stigma, the ECtHR has set a relatively high „threshold of severity“ of treatment in order for it to fall within the material

⁵ According to Art. 1.1. of the *Convention against torture and other cruel, inhuman or degrading treatment or punishment*: „For the purposes of the Convention torture is defined as: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.“

⁶ CAT, General Comment No. 2: Implementation of Article 2 by States Parties, § 1.

⁷ According to Art. 53 from the *Vienna Convention on the Law of Treaties* „a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character“.

⁸ Human Rights Committee, General Comment No. 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, 04/11/94, CCPR/C/21/Rev.1/Add.6, § 10.

⁹ ICTY, *Prosecutor v. Anto Furundžija*, Trial Chamber, § 151.

¹⁰ See for more details about the statute of the prohibition in: Kanev, K., *Protection against torture and other cruel, inhuman or degrading treatment or punishment*, Sofia: Sibi, 2009, pp. 19-25 (in Bulgarian).

scope of Article 3 of the ECHR. It is for the same reason that this prohibition imposes strict positive obligations upon the states. Torture and the severe forms of cruel and inhuman treatment must be dealt with by means of criminal law. No other form of compensation is admissible, even if it allows the possibility for the victims to be rewarded substantial financial compensations. The ECtHR emphasised this in the case *Krastanov v. Bulgaria* of 2004, which concerns physical ill-treatment of a person at the hands of the police:

„If the authorities could confine their reaction to incidents of intentional police ill-treatment to the mere payment of compensation, while remaining passive in the prosecution of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice.“¹¹.

Furthermore, on numerous occasions the ECtHR has declared unacceptable the termination of criminal proceedings on the grounds that the statute of limitations had expired, as well as the amnesty or pardon of state officials for crimes constituting violations of Article 3¹². For the milder forms of inhuman and degrading treatment, the Court finds the civil law remedy as an adequate mechanism for compensation of the victims. The Court has established other positive obligations upon the states related to investigation, protection against ill-treatment from private individuals, international criminal and judicial co-operation, preventive measures, the right to legal redress and compensation and inadmissibility of evidence, obtained through torture and other prohibited treatment¹³.

1.2. „Soft“ standards for the protection of human rights

The contemporary scholars of international law are divided in their opinions regarding the status of the „soft law“. For some, it is a hollow term, whose purpose does not go beyond forcing obligations upon states, which they have not specifically consented to. It is part of the „pathology of the international

¹¹ ECtHR, *Krastanov v. Bulgaria*, No. 50222/99, Judgment of 30 September 2004, § 60. See also: ECtHR, *Ayder and Others v. Turkey*, No. 23656/98, Judgment of 8 January 2004, § 98.

¹² ECtHR, *Erdoğan Yılmaz and Others v. Turkey*, No. 19374/03, Judgment of 14 October 2008, § 56; ECHR, *Terzi and Erkmen v. Turkey*, No. 31300/05, Judgment of 28 July 2009, § 33; ECtHR, *Baran and Hun v. Turkey*, No. 30685/05, Judgment of 20 May 2010, § 58; ECtHR, *Savin v. Ukraine*, No. 34725/08, Judgment of 16 February 2012, § 67.

¹³ Cf.: Kanev, K. *Protection against Torture...*, pp. 142 – 180.

regulatory system"¹⁴. According to other definitions - more contemporary and open-minded - „soft law“ comes down to „[...] those nonbinding rules or instruments that interpret or inform our understanding of binding legal rules or represent promises that in turn create expectations about future conduct“¹⁵.

The relationship between the „soft“ and the „hard“ standards in the international human rights law follows dynamics that is influenced by various factors. On one hand, the rather broad definitions of some of the international treaties, call for interpretation. For instance, what is the meaning of the prohibition of torture, inhuman or degrading treatment or punishment, defined in Article 3 of the European Convention on Human Rights? What did it mean back in the days when it was defined and what does it mean today? One of the sources of interpretation for the Convention organs¹⁶ are the „soft“ standards. What do these standards define as acceptable and unacceptable treatment of the persons deprived of their liberty and what part of it should be covered by the material scope of Article 3? These are questions whose answers could be found in the standards of the „soft“ law. The decisions of the bodies, which the international treaties have designated as their interpreters, while incorporating the „soft“ standards, have transformed them into „hard“ law.

In its judgment in the case of *Marckx v. Belgium* of 1979, the ECtHR adopted an interpretative approach where a „European consensus“ or support amongst the majority of the member states was sought after in deciding whether a particular treatment constituted a violation of a specific provision of the Convention, or not¹⁷. Such a consensus could be a result of a comparative law study, although in many cases it is materialised in the acts of the „soft law.“ As a rule, they are adopted by either a consensus, or by a large majority of votes from the member states¹⁸.

On the other hand, the „soft law“ plays a key role in the evolutive interpretation of the norms of the „hard law“. The evolutive interpretation of the international treaties has its roots in Article 31 of the Vienna Convention on the Law of Treaties, according to which in interpreting the treaty the context should be taken into consideration, which includes „[...] any relevant rules of interna-

¹⁴ Weil, P. „Towards relative normativity in international law?“, *American Journal of International Law*, Vol. 77, No. 3, 1983.

¹⁵ Guzman, A. and T. Meyer. „International Soft Law“, *Journal of Legal Analysis*, Vol. 2, No. 1, 2010, p. 174.

¹⁶ Organs on the Convention include the ECtHR (the Court) and the European Commission of Human Rights (the Commission). The Commission was abolished following the entering into force of Protocol No. 11 to the Convention in 1998.

¹⁷ ECtHR, *Marckx v. Belgium*, No. 6833/74, Judgment of 13 June 1979, § 52.

¹⁸ Ilieva, I. Op. cit., p. 263. „In Strasbourg the „soft law“ represents and has always represented the most important source of crystallisation of the common European consensus and the legacy of shared values.“ (Partly dissenting opinion of judge Pinto de Albuquerque in *Muršić v. Croatia*, § 14 – see below chapter 3 about this key judgment of the ECtHR).

tional law, applicable to the relations between the parties." The ECtHR adopted this approach with its judgment on the case *Tyrer v. the United Kingdom* of 1978. In that judgment for the first time the Court described the Convention as a „living instrument which... must be interpreted in the light of present-day conditions"¹⁹. This case concerned corporal punishment imposed by a court on underage students on the Isle of Man. Apparently at the time of ratifying and entering into force of the Convention for the United Kingdom and the other member states, Article 3 of the Convention allowed the imposition of such punishment. Neither the UK, nor any other member state had made declarations on that point. In its observations before the ECtHR the government pleaded in this sense. The Court however adopted a different approach, according to which:

„[...] it is noteworthy that, in the great majority of the member States of the Council of Europe, judicial corporal punishment is not, it appears, used and, indeed, in some of them, has never existed in modern times... Historically, geographically and culturally, the Island has always been included in the European family of nations and must be regarded as sharing fully that „common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble to the Convention refers"²⁰.

This „common heritage" is a fluid notion. Values and ideals are subject to change. Consequently, traditions also change. Therefore, with the view of being useful to the contemporary societies, the interpretation of the Convention should adapt to the current trends. That would mean altering the interpretation of some provisions of the Convention, especially when they are broad, vague or inherently allowing variations of their meaning over time, but not bringing new meanings to the specific and unequivocally worded provisions. The development of the „soft law" has brought about specifics and facilitated the evolutive interpretation of the „hard law". That does not mean, however, that the Court is obliged to conform with this development, or with the „soft law" as such for that matter. As we shall discuss later, there are notable examples of the Court drastically departing not only from the contemporary trends, but from fundamental principles and specific recommendations set in „soft law" documents. Nevertheless, in its case-law there is a distinct tendency towards formalising the standards of the „soft law", including those concerning the rights of the persons deprived of their liberty in criminal proceedings²¹.

¹⁹ ECtHR, *Tyrer v. the United Kingdom*, No. 5856/72, Judgment of 25 April 1978, § 31.

²⁰ ECtHR, *Tyrer v. the United Kingdom*, § 38.

²¹ See the dissenting opinion of judge Pinto de Albuquerque in the case *Muršić v. Croatia*, §§ 27–42.

In a number of judgments, and as the most sustainable precedent – the key judgment of the Grand Chamber in the case of *Demir and Baykara v. Turkey* of 2008, the ECtHR took a step further in its approach to the evolutive interpretation of the norms of the Convention. In that judgment the Court not only upheld the principle of adapting to the evolving norms and values of the European societies, but outlined the direction of that shift – vying for higher standards in the defence of human rights:

“[...] the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies.”²².

This case concerned the right of public officials to form trade unions and to engage in collective bargaining in the light of the possibility provided by Article 11, for „the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State“. In order to find a violation of the rights of the applicants, the Court tracked down the evolution of the standards protecting public officials, not only in the framework of the „hard law“ within the UN, the Council of Europe and the European union systems, but also in a key document for the subject-matter of the case, *Recommendation No. R (2000) 6* of the Committee of Ministers of the Council of Europe, on the status of public officials in Europe.

1.3. Sources of standards for the protection of rights of persons deprived of their liberty in criminal proceedings

1.3.1. Legally binding standards

The main sources of international legally binding standards for the protection of rights of persons deprived of their liberty in criminal proceedings, are the international human rights treaties. Their provisions should be interpreted in the same way they were interpreted by the bodies tasked to supervise their implementation. For Bulgaria such treaties are those of the UN, the Council of Europe and the European Union. In the case of *Hirst v. the United Kingdom* (no. 2), which concerns the right of the prisoners to vote, the Grand Chamber points out: „There is no question, therefore, that a prisoner forfeits his Conven-

²² ECtHR, *Demir and Baykara v. Turkey*, No. 34503/97, Grand Chamber judgment of 12 November 2008, § 146.

tion rights merely because of his status as a person detained following conviction.”²³ The Court is equally categorical in other similar cases: „[...] the Court accepts that the authorities had a wide discretion in matters related to execution of sentences. However, the Convention cannot stop at the prison gate”²⁴. As a general rule, prisoners continue to enjoy all fundamental rights and freedoms, guaranteed by the international treaties, except for the right to personal liberty. The restrictions on other rights should be specifically justified on the grounds of particular legal provisions, which provide for such restrictions. Often such justification is not possible as some provisions do not allow for restrictions. This is the case with the prohibition of torture and cruel, inhuman or degrading treatment or punishment. In cases where the provisions allow for some restrictions on rights and freedoms, the international bodies tend to justify them with the aim to prevent the commission of crimes and disorder, which may be related to deprivation of liberty.

Therefore, legally binding standards on the rights of prisoners, are all the provisions of the main UN treaties on human rights, to which Bulgaria is a party. They include:

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Optional Protocol to the Convention against Torture (OPCAT);
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention on the Rights of Persons with Disabilities;
- Rome Statute of the International Criminal Court.

Bulgaria has accepted the right to individual petition by victims, provided by some of these treaties. Therefore, it is obliged to comply with the rulings by the bodies authorised to deal with such complaints.

The same applies to the treaties of the Council of Europe, to which Bulgaria is a party. The treaties dealing with the rights of the persons deprived of their liberty in criminal proceedings are as follows:

²³ ECtHR, *Hirst v. the United Kingdom* (no. 2), No. 74025/01, Grand Chamber judgment of 6 October 2005, § 70.

²⁴ ECtHR, *Khodorkovskiy and Lebedev v. Russia*, Nos. 11082/06 and 13772/05, Judgment of 25 July 2013, § 836; ECtHR, *Klibisz v. Poland*, No. 2235/02, Judgment of 4 October 2016, § 354.

- Convention for Protection of Human Rights and Fundamental Freedoms;
- The European Social Charter (revised);
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- Convention on the Transfer of Sentenced Persons;
- European Convention on Extradition;
- Framework Convention for the Protection of National Minorities;
- *Convention on Human rights and Biomedicine* And three of the additional protocols to it.

There are a number of other treaties, relating to the rights of prisoners, within the framework of the Council of Europe, albeit with a more limited application. They are in the area of legal cooperation, citizenship and cybercrime. Out of all legally binding standards of the Council of Europe, the most comprehensive and significant are those of the ECHR. Currently the ECtHR has generated considerable case-law with a wide material scope, which covers spheres, some of which have not been covered even by the „soft law“ standards.

Legally binding for Bulgaria, as a member state of the European Union, are also the standards of the EU law. The European Union has not created its own comprehensive „hard“ standards on the rights of prisoners. This is a weakness of the EU law, which in addition to some serious discrepancies between the international standards and the actual situation in some member states, impedes mutual trust and international cooperation. Back in 2009, the European Parliament called for the development of minimum standards for prison and detention conditions and a common compendium of prisoners' rights in the EU²⁵. In 2017 the European Parliament adopted another resolution on prison systems and conditions, where that call was reiterated²⁶. However, to this day, those calls have not resulted in concrete action..

In spite of these deficiencies of the EU law, we should note that the Charter of Fundamental Rights of the European Union is applicable to all member states when they apply the EU law. In addition, some acts of the secondary EU law affects the rights of some categories of prisoners. This e.g. is the case with the *Council Framework Decision on the European arrest warrant and the*

²⁵ European Parliament, Resolution of 25 November 2009 on the Communication from the Commission – An area of freedom, security and justice serving the citizen – Stockholm Programme, P7_TA(2009)0090.

²⁶ European Parliament, Prison systems and conditions, Resolution of 5 October 2017 on prison systems and conditions (2015/2016(INI)), P8TA(2017)0385.

surrender procedures between Member States of 2002²⁷. It is of key importance for the exercise of a wide range of prisoners' rights in the issuing member state, as well as in the executing member state. It concerns detainees who are subject of a European Arrest Warrant for the purpose of a criminal prosecution, execution of a sentence for deprivation of liberty or a remand measure in another member state. Another key act of the secondary EU law is *Directive (EU) 2016/800* of the European Parliament and of the Council, on procedural safeguards for children who are suspects or accused persons in criminal proceedings of 11 May 2016²⁸. This directive defines a wide range of rights of children who are suspects or accused in criminal proceedings, including those who are detained. Among them are rights concerning detention conditions, access to medical treatment, the right of contact with parents/legal guardians, the right to information, the right to legal aid, and the right to individual assessment. Another document, which regulates the rights of persons, detained in criminal proceedings, is the *Resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*. It regulates some rights of this category of prisoners, including their right to interpretation and translation (Measure A)²⁹; the right to information (Measure B)³⁰; the right of access to a lawyer and legal aid (Measure C); the right to contact relatives, employers and consular offices (Measure D)³¹; special guarantees for the vulnerable suspects and accused (Measure E)³²; Green book on pre-trial detention³³. The range of guaranteed rights set in these documents is quite narrow. They are mainly concerned with the rights, guaranteeing a fair trial.

²⁷ EU Council, Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

²⁸ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

²⁹ Directive 2010/64/EU of the European parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010.

³⁰ Directive 2012/13/EU of the European parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012.

³¹ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013; Directive (EU) 2016/1919/EU of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016.

³² Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016; Recommendation of the European Commission of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, OJ C 378, 24.12.2013.

³³ Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM (2011) 327, 14.06.2011.

1.3.2. The „soft law” standards

None of the aforementioned legally binding instruments are exclusively dedicated to the prisoners' rights. *The Optional Protocol to the Convention Against Torture* as well as the *European Convention for the Prevention of Torture*, which considerably (although not exclusively) cover the area of deprivation of liberty in criminal proceedings, do not provide for rights as such, but rather establish preventive mechanisms against the violations of one of them – the prohibition of torture, cruel, inhuman or degrading treatment or punishment.

Among the „soft law” documents there are such focused exclusively on the rights of the persons deprived of their liberty in criminal proceedings. The main one at UN level is the *Standard Minimum Rules for the Treatment of Prisoners* (SMR). This is the oldest of all compendiums of standards. It was adopted back in 1955 by the First UN Congress on Crime Prevention and Criminal Justice. Later, in 1957, the Standard Minimum Rules were approved by the UN Economic and Social Council. Since then, the SMR have undergone several amendments. The last one was of 2015. It brought the standards up to date and widened their scope. Moreover, it added up the subtitle „*The Nelson Mandela Rules*” to honour the long-time political prisoner and fighter against apartheid, who became the first black president of South Africa after the abolition of apartheid³⁴. Currently The Mandela Rules are the most comprehensive compendium of standards for the treatment of persons deprived of their liberty in criminal proceedings at the global level.

On the level of the Council of Europe, the analogue of the SMR is the European Prison Rules (EPR). They were adopted by a resolution of the Committee of Ministers in 1973. Since then, these rules have also undergone several amendments, the last one of 2020. Formally, this is an up-to-date version of the 2006 revision³⁵. The EPR are the most exhaustive European compendium on the treatment of the persons deprived of their liberty in criminal proceedings. They serve as a foundation for all the bodies of the Council of Europe in the implementation of their mandates in this area, as well as in the relationships with other organisations or third parties.

In addition to the aforementioned documents of the „soft law”, which as their declared purpose, cover all basic aspects of the deprivation of liberty in

³⁴ UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/C.3/70/L.3, 29 September 2015. SMR, along with other documents, regulating standards for treatment of prisoners, can be found at: <https://prisonreform.bg/>.

³⁵ Committee of Ministers, Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, Rec(2006)2-rev, 1 July 2020.

criminal proceedings, the UN and the Council of Europe have adopted a number of other documents, concerning various aspects of the deprivation of liberty or the treatment of different groups of prisoners. A substantial part of them focuses on groups and persons in situations of vulnerability inside prisons and aim at formulating standards and measures for the fulfilment of the positive duties of the state for their protection. Some of them, along with standards for the treatment of prisoners, define standards for other categories of persons, subject to penal sanctions or deprived of liberty outside of criminal proceedings.

Apart from the SMR, the other key UN documents defining „soft“ standards for the treatment of persons deprived of their liberty in criminal proceedings are:

- UN rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) of 2010;
- UN rules for the Protection of Juveniles Deprived of their Liberty (the Havana rules) of 1990;
- UN Minimum Standard Rules for the Administration of Juvenile Justice („The Beijing rules“) of 1985;
- *Basic Principles for the Treatment of Prisoners*, UN General Assembly Resolution of 14 December 1990;
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990.

In addition to the above UN documents, we should also mention the recommendations of the Subcommittee on Prevention of Torture – the general ones, as well as the ones formulated following visits countries – parties on the OPCAT. From the general recommendations the most significant ones are those on women deprived of liberty, the prohibition of torture against LGBTIQ persons, as well as the ones on pre-trial detention³⁶. Among the „soft“ standards of the UN are also the statements and recommendations of the Special Rapporteur on Torture. This mechanism, established with a resolution by the former Commission on Human Rights in 1985, is one of the longest standing thematic mandates of the UN, with one of the most prominent international experts in that area.

The „soft“ law documents of the Council of Europe, apart from the European Prison Rules, are significantly more in number and cover wider range, than the respective UN documents. The key ones are the recommendations of the Committee of Ministers of the Council of Europe, which include:

³⁶ See these documents at: <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Documents.aspx>.

- Recommendation Rec(2008)11 on the European rules for juvenile offenders subject to sanctions or measures;
- Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners;
- Recommendation Rec(2014)3 concerning dangerous offenders;
- Recommendation Rec(2012)12 concerning foreign prisoners;
- Recommendation Rec(2003)22 on conditional release (parole);
- Recommendation Rec(89)12 on education in prison;
- Recommendation Rec(98)7 concerning the ethical and organisational aspects of health care in prison;
- Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation;
- Recommendation Rec(93)6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison;
- Recommendation Rec(2012)5 on the European Code of Ethics for Prison Staff.

An important part of the „soft“ standards of the Council of Europe are the observations and the recommendations to the states parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT), during or after its monitoring visits to member states. We should also add the compendiums of standards included in the CPT annual reports. These standards cover a wide range of topics, practices, institutions and groups. A substantial part of them concerns deprivation of liberty in criminal proceedings³⁷.

Similarly to the situation with the „hard“ standards, the European Union has not developed a comprehensive compendium with „soft“ standards, dedicated to prisoners' rights. Special attention in this regard deserves the resolution of the European Parliament on *Prison Systems and Conditions* of 5 October 2017³⁸. It covers a number of prisoners' rights in general, as well as the rights of particular groups of prisoners in situations of vulnerability.

The Organisation for Security and Co-operation in Europe (OSCE) is also active in pushing towards prison reform from the human rights' perspective

³⁷ All published reports, as well as the CPT standards can be accessed at CPT's web site. The section with the standards is available, translated in most European languages, at: <https://www.coe.int/en/web/cpt/standards>.

³⁸ See above note 26.

and as part of the human dimension, which is the third focus of the organisation since its foundation. The creation of standards is not part of its work, however a number of OSCE forums have defined such standards. In certain instances, like for example with the recommendations to state parties to provide unhindered access to monitoring of NGOs in places of detention, the OSCE is innovative.

1.4. Material scope of the standards for protection of the rights of persons deprived of their liberty in criminal proceedings

Although the legally binding instruments related to human rights do not focus specifically on prisoners' rights, the organs, which supervise their implementation, have generated standards that cover a wide range of rights. In Table 1 below we provide a general overview of the material scope of the standards and the recommendations. In the next chapters we are taking a closer look at the specifics of the „soft“ international standards for treatment of persons deprived of their liberty in criminal proceedings, as well as at the case-law of one international body – the European Court of Human Rights, to which Bulgarian citizens often turn with complaints.

TABLE 1. **Material scope of the standards for protection of prisoners' rights**

Sphere	Scope
Allocation and accommodation	Legal grounds for the allocation; Registration and maintenance of prisoners' records; Accommodation near the area of residence; Placement in cells; Compatibility between the persons placed in the same cell; Accommodation by categories
Material conditions	Space per prisoner; Personal hygiene, hygiene inside and outside the cells; Availability and location of bathrooms; Ventilation; Lighting of the cells; Food
Healthcare	Access to medical services; Quality of the medical services; Prisoners' access to medical information; Autonomy of the clinical decisions; Role of the medical staff in cases of violence; Confidentiality of the medical information; Psychiatric care and treatment of drug users; Participation of prisoners in clinical trials; Medical inspections of the material conditions and the isolation cells; The role of the medical staff during searches; The role of the medical staff during hunger strikes
Activities, labour and education	Access to education for prisoners; The use of audio-visual educational resources; Providing meaningful activities during the deprivation of liberty; Access to work; Forced labour; Safe working conditions; Work remuneration; Social insurance

Sphere	Scope
Disciplinary practices	Lawfulness of the disciplinary penalties and their compatibility with the prohibition of inhuman and degrading treatment; Fair process during the imposition of disciplinary sanctions; Appeal and judicial review of the disciplinary measures; Restrictions on the use of some disciplinary measures; Role of the medical staff in the enforcement of sanctions
Use of force and instruments of restraint	Conditions for the use of force and instruments of restraint; Lawfulness, necessity and proportionality of the measures; Prohibition of the use of certain means of restraint; Protection against abuse of force and instruments of restraint
High security regime and isolation	Solitary confinement; measures applied during high security regimes; Review of the regime; Fair process in applying strict regimes
The right of protection of private and family life, contact with the outside world, correspondence	Searches of prisoners and cells; Searches of visitors; access to personal data; Visitations; Support for family life; Notices and day releases, related to important family events; Marriage; Control of correspondence; the use of mother tongue; Contacts with the diplomatic or consular services
Practice of religion	Access to religious representatives; Participation in religious services in prison; Compliance with dietary requirements of a religion; Access to religious literature; Right of prisoners not to reveal their religious affiliations
Freedom of expression	Confiscation of written materials; Access to media; Access to the internet; Demonstration of symbols on the body and clothes in prison
Access to justice	Access to court and other institutions; Access to a lawyer and legal aid; Effective participation in court proceedings; Possibility to file complaints and processing of complaints; Involvement of applicants in the review of their complaints
Political rights of prisoners	Rights of prisoners to vote; Ways to restrict voting rights of prisoners
Inspections and monitoring	Obligation for carrying out inspections and monitoring; Rights of the persons, carrying out inspections and monitoring; Access of ngos to prisons for the purpose of monitoring
Protections of the groups in situation of vulnerability	Special standards for treatment of some groups in situations of vulnerability – women, children, foreigners, lgbtiq, persons with disabilities, ethnic minorities



2

CONTENTS OF THE „SOFT“ INTERNATIONAL STANDARDS FOR TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY IN CRIMINAL PROCEEDINGS

2.1. Allocation and accommodation

One of the most basic requirements, stipulated by the Standard Minimum Rules for the Treatment of Prisoners (SMR) and the European Prison Rules (EPR), concerns the lawfulness of the placement in prison. Both documents demand that placement in a prison should only take place as a result of a lawful decision by a competent authority³⁹. Moreover, during the admission, the authorities should collect information about the identity of the detained persons, the reasons for their detention, the exact date and time of their placement, their personal belongings and members of their family. Information should also be recorded about any visible physical injuries, as well as complaints by newly placed prisoners about injuries, inflicted prior to their placement in prison⁴⁰. The European Committee for the Prevention of Torture (CPT) requires that each new detainee is interviewed and examined by a medical specialist, not later than 24 hours after his/her placement in a detention facility⁴¹.

Another key stipulation of the SMR and EPR is for the prisoners to be accommodated, as much as possible, near to the location of their permanent residence or to the places of their social rehabilitation⁴². Similar requirement is envisaged in the *Bangkok Rules*⁴³. Albeit to a limited degree, the ECtHR also adopted this requirement in its case-law⁴⁴.

³⁹ SMR, Rule 7; EPR, Rule 14.

⁴⁰ SMR, Rule 7d; EPR, Rule 15.1e.

⁴¹ CPT, *26th General Report*, CPT/Inf(2017)5-part, 2017, § 72.

⁴² SMR, Rule 59; EPR, Rule 17.1.

⁴³ Bangkok Rules, Rule 4.

⁴⁴ See below Chapter 3.

In its original version of the 1950s, the SMR set a high standard for the placement of prisoners in cells – „where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself“⁴⁵. The EPR adopt a similar standard: „Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation“⁴⁶. The EPR go further by stating that „[a]ccommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other“⁴⁷. These standards are a good example of a „soft“ law, which has remained in the realm of good intentions for more than 70 years after they were formulated. Not a single body or an institution, interpreting the provisions of the international treaties, has adopted this standard in its case-law.

The SMR and the EPR provide for segregation/classification of certain categories of prisoners and their separation for the purpose of protection of the vulnerable ones. The SMR require that during segregation a number of characteristics of the prisoners should be considered, such as gender, age, prior criminal record, legal status and type of regime⁴⁸. Nowadays such requirements sound a little excessive. Detention facilities should be able to guarantee the safety of the vulnerable prisoners, without the need to unduly segregate them by categories. The EPR demand only the segregation of the untried from the sentenced prisoners, men from women and younger from older prisoners⁴⁹. The *Havana Rules* recommend that the classification of the categories of juveniles should be based on „the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being“⁵⁰.

2.2. Material conditions

The standards on material conditions in the places for deprivation of liberty cover a number of aspects concerning the floor space per prisoner, hygiene, access to toilet and bathroom, ventilation, lighting inside the cells and food. Out of the aforementioned, the most essential aspect is the floor space. Based on this criterion, we can decide whether a penitentiary institution is overcrowded or not. The SMR and the EPR do not specifically define what constitutes a sufficient living space for a person deprived of his/her liberty. As to the other as-

⁴⁵ SMR, Rule 12.1.

⁴⁶ EPR, Rule 18.5.

⁴⁷ EPR, Rule 18.6.

⁴⁸ SMR, Rule 11.

⁴⁹ EPR, Rule 18.8.

⁵⁰ *Havana Rules*, Rule 28.

pects of the material conditions, both documents have set general recommendations like: the accommodation „shall meet all requirements of health“⁵¹, „the windows shall be large enough to enable the prisoners to read or work by natural light“⁵², the cells should be clean⁵³, the sanitary and bathing facilities should be „adequate“ for maintaining personal hygiene⁵⁴, prisoners should be provided with products to maintain their personal hygiene, as well as clean clothing and bedding⁵⁵. Similarly broad and subject to interpretation are the standards regarding food. According to the SMR, it should be of „nutritional value adequate for health and strength, of wholesome quality and well prepared and served“⁵⁶. The EPR are a little more specific with their requirement that the energy and protein content of the prison diet is prescribed in the national law and that meals should be served three times a day at reasonable intervals⁵⁷.

The SMR and the EPR are slightly more specific when it comes to the frequency of access to bathing. According to the SMR, prisoners should have access to showers minimum once a week in temperate climate, while according to the EPR showers should be available to prisoners at least twice a week⁵⁸. This discrepancy between the two documents on the same subject-matter is difficult to explain.

The minimum standard for living space per prisoner is defined in detail by the CPT. Since its very foundation, in many of its country reports, including those on Bulgaria, the Committee has set a minimum of 4 square meters per prisoner in a common cell and a minimum of 6 square meters per prisoner in a single cell, as an unconditional standard, which all European penitentiary systems must adhere to. In 2015, in a special document, the CPT elaborated on this standard. According to it, the minimum standard for living space per prisoner should be:

- 6 sq. m. per prisoner for a single-occupancy cell, plus sanitary facility;
- 4 sq. m. per prisoner for a multiple-occupancy cell plus fully-partitioned sanitary facility;
- At least 2 m. of space between the walls of the cell;
- At least 2,5 m. of space between the floor and the ceiling of the cell⁵⁹.

⁵¹ SMR, Rule 13.

⁵² SMR, Rule 14a; EPR, Rule 18.2a.

⁵³ EPR, Rule 19.2.

⁵⁴ SMR, Rules 15 and 16; EPR, Rule 19.4.

⁵⁵ SMR, Rules 18,19 and 21.

⁵⁶ SMR, Rule 22.1.

⁵⁷ EPR, Rule 22.2 and 22.4.

⁵⁸ SMR, Rule 16; EPR, Rule 19.4.

⁵⁹ CPT, Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44, Strasbourg, 15 December 2015.

The CPT emphasised that this is a minimum standard and in certain cases its observation can lead to feelings of discomfort due to overcrowding in the common cells. This is why the Committee has set a standard which is „desirable“ for such cells. This standard is based on the minimum living space per person in a single cell, which is 6 sq. m., and then added 4 sq. m. for any additional person accommodated in a common cell. In this way the „desirable“ space for two in a common cell comes up to 10 sq. m. plus the sanitary annexe; a cell for 3 persons should be 14 sq. m. plus the sanitary annexe; and for 4 – 18 sq. m. plus the sanitary annexe⁶⁰.

The CPT points out that it does not regard this standard as „absolute“. This means that „minor deviations from its minimum standards“ could be allowed, as far as there were „other alleviating factors“. The Committee defined these factors in a special appendix to its document of 2015. They include: state of repair and cleanliness; access to natural light, ventilation and heating; the condition of the sanitary facilities; access to outdoor exercise; the purposeful activities offered by a prison.

2.3. Health Care

The leading principle in providing health care for the persons deprived of their liberty is the principle of equivalence of care. It was formulated in 1990 in the Basic Principles for the Treatment of Prisoners. One of them states that „prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation“⁶¹. Since the adoption of this document, this principle has been reaffirmed in a number of other documents on a global and regional level. The practical enforcement of this principle, however, has proven to be a challenge, even when it comes to practices in the advanced Western societies⁶². However, as is evident from the CPT country reports, problems with the enforcement of this principle are even more serious in the Eastern European countries, including Bulgaria.

On the level of the Council of Europe, the principle of equivalence of care was set up in the 3rd General Report of the CPT in 1993⁶³, as well as in the key recommendation on this topic – Recommendation No. R(98) 7 concerning the ethical and organisational aspects of health care in prison. The recommendation outlines three aspects of the principle:

⁶⁰ Ibid., § 16.

⁶¹ *Basic Principles for the Treatment of Prisoners*, General Assembly Resolution, December 1990, Principle 9.

⁶² Niveau, G. „Relevance and limits of the principle of „equivalence of care“ in prison medicine“, *J Med Ethics*, 2007 Oct., 33(10).

⁶³ CPT, Extract from the 3rd General Report of the CPT, CPT/Inf (93)12-part, 1993, § 38.

- Health policy in custody should be integrated into, and compatible with, national health policy;
- The prison health care service should have a sufficient number of qualified medical staff, as well as appropriate premises and equipment of a comparable quality to those outside prison;
- The role of the ministry responsible for health should be strengthened in the domain of quality assessment of hygiene, health care and organisation of health services in custody, in accordance with national legislation.⁶⁴

With the last revision of the SMR, the chapter on healthcare in prisons was considerably expanded. The principle of equivalence of care is also affirmed⁶⁵. The requirement for providing health-care service which employs an interdisciplinary team in each prison is elaborated on and its duties are clearly outlined: timely medical examination upon admission to prison; ongoing treatment; maintenance of medical files for each prisoner; preventive health-care; preventing and combatting infectious diseases; assessment of how continuous imprisonment might affect a prisoner's physical or mental health; documenting and reporting of cases of torture and other inhuman treatment; medical inspection over the served food, the material conditions and the hygiene in prison⁶⁶. The EPR use the same principles as a foundation and offer recommendations similar to the ones in the SMR, albeit not as far-reaching⁶⁷.

A key requirement of the „soft“ standards on health care in prison is for the clinical independence of the medical practitioners in their decision-making, related to prisoners' health. According to *Recommendation (98)7* „[c]linical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence“⁶⁸. Such clinical decisions „may not be overruled or ignored by non-medical prison staff“⁶⁹. This in effect means that clinical decisions should be given priority over security concerns. If a prisoner's health is in serious danger, he/she should be transferred to a hospital outside prison, whereby the risk of escape and other security concerns cannot override the clinical decisions, which are taken based on medical criteria. Similar approach should apply when

⁶⁴ Rec(98)7 of the Committee of Ministers, § 10, 11 and 12.

⁶⁵ SMR, Rules 24.1 and 32

⁶⁶ SMR, Rules 25, 16, 30, 31, 33, 34, 35.

⁶⁷ The principle of equivalence of care is stipulated in Rules 40.2 and 40.3. Even after the revision of 2020, the EPR continue to follow the outdated standard of „at least one qualified general medical practitioner“ (Rule 41.1).

⁶⁸ Rec(98)7, § 20; CPT, Extract from the 3rd General Report of the CPT, § 72.

⁶⁹ SMR, Rule 27.2.

the medical personnel in prison are under pressure to take decisions in cases where there are no sufficient clinical indications. The *Declaration of Malta* of the World Medical Association is quite unequivocal – „physicians must not allow themselves to be pressured to breach ethical principles, such as intervening medically for non medical reasons“⁷⁰. As far as the implementation of these principles might create a source of confrontation between the medical and the custodial staff in prison, it is of key importance that mutual understanding and acceptance is achieved of the specific roles of the two professional groups⁷¹.

The „soft“ standards in the area of health care in prisons have a number of other aspects, the most significant of which are:

- the right of the prisoners to unconditional access to their medical files, directly or through a third party appointed by the prisoner⁷²;
- obligation of the medical professionals to maintain confidentiality of the medical information applying the same legal standards as in the community⁷³;
- a prohibition on the medical professionals from engaging in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health⁷⁴;
- prohibition on the participation of prisoners in any experiments without their prior informed consent⁷⁵.

Medical professionals face unusual challenges and they have a particular role to play in situations of prisoners on hunger strike. The standards of *Recommendation (98)7* are somewhat vague regarding the doctors' behaviour in case of a deterioration in the condition of a hunger striker. According to the recommendation, the doctor should report on the deterioration to the „appropriate authority“ and take action in accordance with national legislation“⁷⁶. The *Declaration of Malta* of the World Medical Association on hunger strikes is clearer and more explicit. According to it, hunger strikes should be treated as a prisoner's right of self-expression. „Applying, instructing or assisting forced

⁷⁰ WMA, Declaration of Malta on Hunger Strikes, 1991, with revisions, § 7.

⁷¹ Pont, J., T. Harding. Organisation and Management of Health Care in Prison: Guidelines, Council of Europe, 2019, p. 19–20.

⁷² SMR, Rule 26.

⁷³ Rec(98)7, § 13; SMR, Rule 32c; CPT, Extract from the 3rd General Report of the CPT, § 50.

⁷⁴ SMR, Rule 48.1. See also: WMA, *Declaration of Tokyo*, 1975, with revisions.

⁷⁵ EPR, Rule 48.1; CPT, Extract from the 3rd General Report of the CPT, § 48.

⁷⁶ Rec(98)7, § 63.

feeding contrary to an informed and voluntary refusal is unjustifiable.”⁷⁷ This applies even to situations where there is a real danger of the hunger striker to die. „It is ethical to allow a determined hunger striker to die with dignity rather than submit that person to repeated interventions against his or her will.”⁷⁸ The doctor can take a decision about artificial feeding only in case the hunger striker's condition prevents him/her from taking an unimpaired decision, for instance if they are in a coma, and he/she had not left unpressured advance instructions. However, even in such extreme instances, some forms of artificial feeding, like rectal hydration are strictly prohibited⁷⁹.

2.4. Activities, work and education

In its 2nd Annual Report of 1992, the CPT emphasised the need for providing access to varied activities for all prisoners:

„A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial”⁸⁰.

This recommendation is regularly reiterated during all country visits of the CPT, including the visits to Bulgaria.

From its first draft, the SMR have established as an essential requirement that prisoners are allowed to exercise at least one hour every day in the open air⁸¹. In addition, the SMR require providing other activities for the prisoners, including work and education. This part of the rules was expanded in its last revision of 2015, especially the part dedicated to work. The SMR require that the work opportunities offered to the prisoners increase their qualification and thus improve their chance of finding work after their release from prison⁸². It is recommended that prisoners are employed in industries that are run directly by the prison administration and not by private contractors⁸³. The SMR also stipulate that the rules applied regarding safe working conditions, working hours and rest are the same as legislative provisions for work outside prison. Prisoners' labour should be fairly remunerated and part of their earnings they

⁷⁷ Declaration of Malta, § 4.

⁷⁸ Ibid., § 20.

⁷⁹ Ibid., § 21.

⁸⁰ CPT, Extract from the 2nd General Report of the CPT, CPT/Inf(92)3-part2, 1992, § 47.

⁸¹ SMR, Rule 23.

⁸² SMR, Rule 98.

⁸³ SMR, Rule 100.1.

should be allowed to spend for personal items to use during their incarceration⁸⁴. The standard of the EPR requires that the working conditions for the prisoners „shall be in conformity with all applicable standards and controls which apply in the outside community“⁸⁵. Neither of the two documents, however, specifically provides that the prisoners' work is integrated into the social security system of the country. The EPR only recommend that „[a]s far as possible, prisoners who work shall be included in national social security systems“⁸⁶. Among the „soft“ standards dedicated to work in prison, it is worth noting those regarding the use of work as a punishment. The SMR specifically prohibit disciplinary sanctions which involve work „in the service of the prison“, but at the same time make an explicit stipulation that „[t]his rule shall not... impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted under supervision, to prisoners who are formed into groups for the purposes of treatment“⁸⁷. In its resolution on prison systems and conditions, the European Parliament is more emphatic: „[...] no work performed by a prisoner should be considered as a form of punishment and that potential abuse must be combated“⁸⁸.

When it comes to education in prison, the „soft“ standards make a distinction between the state's duties regarding juvenile prisoners of school age on one hand, and the adult prisoners on the other. Regarding the juveniles, *The Havana Rules* are quite explicit: „Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society“⁸⁹. Moreover, education should be organised in schools outside of the prison and in any case – by qualified teachers through programmes identical to those in the society. In addition, „[d]iplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized“⁹⁰.

The education standards of the EPR and the SMR are less categorical when it comes to adult prisoners. The EPR recommend that each prison institution should strive to provide access to educational programmes to all prisoners according to their individual needs. The status of education offered in the prison should be the same as the status of work⁹¹. With regard to the con-

⁸⁴ SMR, Rule 103.

⁸⁵ EPR, Rule 105.3.

⁸⁶ EPR, Rule 26.17.

⁸⁷ SMR, Rule 40.

⁸⁸ European Parliament, Prison systems and conditions, § 65.

⁸⁹ *The Havana Rules*, Rule 38.

⁹⁰ *Ibid.*, § 40.

⁹¹ EPR, Rules 28.1 and 28.4.

victed prisoners, the EPR require a „systematic programme of education“ to be implemented, as a „key part“ of their prison regime. All convicted prisoners should be encouraged to take part in these programmes⁹². The SMR offer provisions only for the convicted prisoners. They state that education for the juvenile and the illiterate prisoners should be compulsory⁹³.

Significantly more comprehensive than the EPR and the SMR is Recommendation (89)132 on Education in Prison. It requires that all prisoners have access to education and that it should be „like the education provided for similar age-groups in the outside world“⁹⁴. Whenever possible, prisoners should be allowed to take part in education outside prison⁹⁵. Various forms of education are also recommended, as well as cultural, sports and social education activities aimed to facilitate the prisoners' return to society.

2.5. Disciplinary practices

Disciplinary practices concern the imposition of punishments to prisoners for the purpose of maintaining order inside prison, as well as to protect the rights of prisoners and prison staff. The standards in this sphere are closely interlinked with the standards of isolation and change of regime, and, to a lesser degree, with the standards on the use of force and instruments of restraint.

Both the SMP and the EPR stipulate that resorting to disciplinary measures should be a last resort after exhausting all the possibilities of mediation for solving conflicts⁹⁶. A key requirement of both documents is for lawfulness and proportionality of the sanctions⁹⁷. The EPR are a little more concrete than the SMR, in their stipulations for a fair procedure. According to the EPR, the national legislation must define:

- The acts and inactions by prisoners, which constitute disciplinary offences;
- The legal process that applies in such cases;
- Types and duration of the disciplinary punishments;
- The competent authority to impose such punishments;
- Access to and the authority of the appellate process⁹⁸.

⁹² EPR, Rules 106.1 and 106.2.

⁹³ SMR, Rule 104.1.

⁹⁴ Rec(89)12, §§ 1 and 2.

⁹⁵ Ibid., § 14.

⁹⁶ SMR, Rule 38.1; EPR, Rule 56.2.

⁹⁷ SMR, Rule 39; EPR, Rules 60.1 and 60.2.

⁹⁸ EPR, Rule 57.2. See also Rule 37 from SMR for a similar, albeit more limited list of guarantees.

The EPR also insist that the state guarantees the prisoners, subject to a disciplinary process, the following rights:

- that they are promptly informed in details and in a language that they understand of the nature of the accusations against them;
- to allow sufficient time and facilities for the preparation of their defence;
- be allowed to defend themselves in person or through legal assistance if the interests of justice so require;
- be allowed to question witnesses;
- to use free translation services when they do not understand the language used at the hearing⁹⁹.

These rules are very similar to the ones guaranteed by Article 6 of the ECHR in its criminal limb. Nevertheless, the EPR do not specify that the hearing authority should be a judicial one. The EPR also do not explicitly provide for the possibility for a judicial control over the imposition of disciplinary punishments, although they do require an avenue for appeal to a „competent and independent higher authority“. A more specific requirement however is provided for in the SMR. They clearly state that „[p]risoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them“¹⁰⁰.

Both the SMR and the EPR explicitly prohibit the imposition of double punishment for the same offense¹⁰¹, as well as certain measures to be used as punishments. The lists of prohibited punishments vary between the two documents (see Table 2).

TABLE 2 Prohibited punishments according to the SMR and the EPR¹⁰²

SMR	EPR
Work in the service of the prison	Collective punishment
Indefinite solitary confinement	Corporal punishment
Prolonged solitary confinement, i.e. longer than 15 consecutive days	Placement in a dark cell, and all other forms of inhuman or degrading punishment
Placement of a prisoner in a dark or constantly lit cell	Prohibition of family contact

⁹⁹ EPR, Rule 59.

¹⁰⁰ SMR, Rule 41.4.

¹⁰¹ SMR, Rule 39.1; EPR, Rule 63.

¹⁰² SMR, Rules 40, 43 and 44; EPR, Rules 60.3, 60.4 and 60.5.

SMR	EPR
Corporal punishment or reduction in a prisoner's diet or drinking water	Instruments of restraint
Collective punishment	
Instruments of restraint	
Prohibition of family contact	

Both documents prohibit solitary confinement to be imposed as punishment on pregnant women, breastfeeding mothers, parents with children in prison, as well as on persons with mental or physical disabilities, when their situation will be exacerbated by such measures¹⁰³. The EPR, however, unlike the SMR, do not explicitly prohibit the indefinite solitary confinement and the prolonged solitary confinement. A restriction on the imposition of solitary confinement for more than 15 consecutive days is stipulated in the Statement on Solitary Confinement by the World Medical Association¹⁰⁴.

The revised SMR include some important provisions on the role of the medical personnel in the disciplinary procedures in prison. Their direct involvement in these procedures is prohibited. However, health-care personnel are obliged to provide special medical care to the punished prisoners, especially to those sanctioned with solitary confinement. Medical professionals also have the duty to monitor and report to the prison director without delay about any negative impact of the imposed punishment upon the physical or mental condition of the prisoner and to demand their termination in cases of deterioration¹⁰⁵.

2.6. Use of force and instruments of restraint

The SMR and the EPR formulate in a similar manner several rules on the use of force and instruments of restraint. The first group of rules defines the instruments which are prohibited. These include chains, irons and other instruments, which are inherently degrading or painful¹⁰⁶.

Another group of rules defines the particular situations in which the use of instruments of restraint are allowed. These are:

- To prevent escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;

¹⁰³ SMR, Rule 45.2; EPR, Rules 60.6 and 60.6b. See also: *Havana Rules*, Rule 67; *Bangkok Rules*, Rule 22.

¹⁰⁴ WMA, Statement on Solitary Confinement, 2015, with revisions.

¹⁰⁵ SMR, Rule 46.

¹⁰⁶ SMR, Rule 47.1; EPR, Rule 68.6.

- As a last resort, in order to prevent a prisoner from self-injury, injury to others or to prevent damage to property, if other less restrictive methods of control have failed¹⁰⁷.

The third group of rules define the conditions and the manner in which force and instruments of restraint may be applied. Those conditions are:

- The instruments of restraint are the least intrusive method of control on the prisoner's movement;
- The use of force and instruments of restraint should be limited within the required time period and should be terminated as soon as the risks of the unrestrained movements of the prisoner cease to be present¹⁰⁸.

In any case, the precise situations, as well the conditions and the method of application of force and instruments of restraint, should be provided for by the national law. Such methods must not be applied under any circumstances on women before or during childbirth, nor immediately after childbirth¹⁰⁹. The EPR also prohibit guards from carrying lethal weapons inside prison, as well as other instruments like truncheons, unless they are required for safety and security in order to deal with a particular incident¹¹⁰. Similarly, the *Havana Rules* prohibit the carrying and use of weapons by personnel in any facility where juveniles are detained¹¹¹.

2.7. High security regime and isolation

Over the last 12 years the „soft“ international standards on the high security regime, involving the separation of sanctioned prisoners from the general prison population, as well as solitary confinement, have undergone a significant evolution. The process began with the 21st General Report by the CPT in 2011 where the Committee summarised its approach to „solitary confinement“. This term in the report has a broader meaning than what is defined by the SMR and the EPR standards in the years to follow. By „solitary confinement“ the CPT means a situation „[...] whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned“¹¹².

¹⁰⁷ SMR, Rule 47.2; EPR, Rule 68.4.

¹⁰⁸ SMR, Rule 48.1; EPR, Rules 68.2 and 68.3.

¹⁰⁹ SMR, Rule 48.2; EPR, Rule 68.7; *Bangkok Rules*, Rule 24

¹¹⁰ EPR, Rules 69.1 and 69.2.

¹¹¹ *Havana Rules*, Rule 65.

¹¹² CPT, Extract from the 21st General Report of the CPT, CPT/Inf(2011)28-part2, 2011, § 54.

In all of the above four instances, there are harmful effects on the mental health and the general wellbeing of the prisoner. Therefore, any measures of this nature should follow the principles of proportionality, lawfulness, accountability, necessity and non-discrimination. For each of the four types of isolation, the CPT provides guarantees, which in general envisage their application under exceptional circumstances. Other guarantees include: keeping detailed records on the implementation of the measure, which could be subject to an outside inspection; access to legal assistance; the opportunity of appeal to an „independent authority“; allowing outdoor exercise and maintaining adequate material conditions in the cells designated for isolation. Only in regard to the solitary confinement as a disciplinary measure does the CPT impose a time limit – it cannot continue for longer than 14 consecutive days¹¹³.

The revised SMR of 2015 introduce the term „solitary confinement“, with a narrower meaning. According to the SMR's definition „[...] solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days“¹¹⁴. The SMR regard solitary confinement in the context of disciplinary measures¹¹⁵. In addition to solitary confinement, the SMR refer to „restrictive measures“, although they are not strictly defined and corresponding standards are not provided for.

The EPR in its last revision adopted the SMR's definition of solitary confinement. However the EPR clearly distinguish solitary confinement from other isolation measures, which they define as „separation“. „Separation“ in reality means the placement of a prisoner under a special regime, through which he/she has very limited contact with other people. The EPR require that „prisoners who are separated shall be offered at least two hours of meaningful human contact a day“¹¹⁶. Thus „two hours of meaningful human contact“ are a key distinction between solitary confinement and the regime of separation. Although the time is fixed, the notion of „meaningful human contact“ remains somewhat unclear. According to some experts' interpretations it should involve direct face to face contact, which does not involve routine interactions that are part of prison procedures, interrogations or medical necessities¹¹⁷.

¹¹³ Ibid., § 56.

¹¹⁴ SMR, Rule 44.

¹¹⁵ See above 2.5.

¹¹⁶ EPR, Rule 53Aa.

¹¹⁷ Van Zyl Smith, D., „Separation and solitary confinement in the revised 2020 European Prison Rules – First thoughts“, 10 July 2020, at: <https://www.penalreform.org/blog/separation-and-solitary-confinement-in-the-revised-2020/> (accessed on 22 November, 2022).

In addition to the fixed limit of duration, the EPR define a number of other rules to be applied to separation. The key ones include:

- There should be thorough assessment of the health of the prisoner concerned, aiming to prevent the adverse effects of separation;
- Separation should be used for the shortest time necessary to achieve its objectives and should be periodically reviewed for effectiveness;
- Material conditions inside the cell should meet the minimum standards for any prisoner's accommodation;
- Opportunities for human contacts and activities should be provided as much as possible;
- Reading materials should be provided, as well as a minimum of one hour per day of outdoor exercise;
- There should be daily visits by the prison director or a member of staff sent on his/her behalf;
- Separation should be terminated or replaced with a less restrictive measure when it affects adversely the prisoner's physical or mental health;
- The right of complaint during the period of separation should be guaranteed¹¹⁸.

The most radical approach to solitary confinement was adopted by the former Special Rapporteur on torture, Juan Mendez. He defined solitary confinement as a physical and social isolation of persons, who are locked in their cells between 22 and 24 hours per day, and recommended its prohibition as punishment:

"The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment – either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement"¹¹⁹.

¹¹⁸ EPR, Rule 53A.

¹¹⁹ GA, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, 5 August 2011, § 84.

2.8. Private and family life, contact with the outside world and correspondence

The „soft“ standards relating to private and family life of prisoners and their contacts with the outside world and correspondence are rather limited. Both the SMR and the EPR require that prisoners are granted access to all the information, including medical records, that is part of their personal files, except for those restricted under national law for purposes of safety and security, as well as the right to receive a copy of such records upon request¹²⁰. Also prisons are obliged to keep the information from the prisoners' records confidential and only share it with persons whose professional responsibility requires access to such records¹²¹.

Another group of standards regulate searches of prisoners and cells, as well as their visitors and the staff. In all cases searches should be carried out while respecting the dignity of the searched individual and preserving the balance between security concerns and personal space¹²². The SMR devote special attention to strip searches. Their view is that intrusive searches should be conducted only if absolutely necessary, in private, by trained staff of the same sex as the searched prisoner, and subsequently detailed records on the search should be produced¹²³. Body cavity searches should be carried out by medical personnel, other than the ones primarily responsible for the health of the prisoner or by staff that has undergone proper training by a medical professional¹²⁴. The EPR require that all searches are conducted by staff of the same sex¹²⁵.

Both the SMR and the EPR make provisions for the right of the prisoners to keep regular contact with their family and other persons, including through visitations. Of course, this right is subject to lawful limitations and has to pursue legitimate aims. The standards in the two documents differ to some extent. The SMR insist on the right to written correspondence unconditionally, while using telecommunication, electronic, digital and other means could take place only „where available“, „at regular intervals“ and only with „family and friends“¹²⁶. In the EPR this right is elaborated on. It is not limited by the avail-

¹²⁰ EPR, Rule 16A.4. This rule is introduced by the revised version of the EPR of 2020. See also a more general provision of the SMR in Rule 9.

¹²¹ SMR, Rule 9; EPR, Rule 16A.3.

¹²² SMR, Rule 50; EPR, Rules 54.3 and 54.9.

¹²³ SMR, Rules 51 and 52.

¹²⁴ SMR, Rule 52.2.

¹²⁵ EPR, Rule 54.5.

¹²⁶ SMR, Rule 58.

ability of means of communication, like telecommunication, electronic, digital and other forms, also the wording regarding the frequency is more generous – it should happen „as often as possible“. Moreover, there is no restriction on the addressees – they could be not just family, but also „other persons and representatives of outside organisations“¹²⁷. The EPR go even further by requiring that the prison administration supports prisoners in maintaining „adequate contact with the outside world and provide them with the appropriate welfare support to do so“¹²⁸.

Both the SMR and the EPR provide a set of obligations regarding the notification of the families of prisoners about their imprisonment, transfer to another prison or health care institution, serious illness or injury, as well as about the death of a prisoner¹²⁹. Both documents require „whenever circumstances allow“ for the prisoners to be allowed to leave prison, under escort or alone, in order to visit a critically ill relative, attend a funeral or for other humanitarian event¹³⁰.

The Havana Rules set even higher standards for contact with the outside world for the juvenile prisoners. They stipulate a minimum standard for frequency of visits – in principle once a week and not less than once a month¹³¹. Similarly, they insist that the juveniles be allowed to communicate in writing or by telephone, at least twice a week¹³².

2.9. Freedom of expression and practising religion

Freedom of expression, as a right of prisoners, is superficially touched upon in both the SMR and the EPR. The SMR require that prisoners are provided access to news, through supplying them with newspapers and periodicals, opportunities to listen to the radio, to attend lectures or „by any similar means as authorized or controlled by the prison administration“¹³³. A similar rule is provided for by the EPR¹³⁴. These provisions cover quite a limited range of interests, regarding the right to freedom of expression. In its case-law the ECtHR has broadened the range of these interests.

¹²⁷ EPR, Rule 24.1.

¹²⁸ EPR, Rule 24.6. Similar obligation in standards at a UN level is provided for women prisoners in Rule 26 of *The Bangkok Rules*.

¹²⁹ SMR, Rules 68 and 69; EPR, Rules 24.8 and 24.9.

¹³⁰ SMR, Rule 70; EPR, Rule 24.7.

¹³¹ *The Havana Rules*, Rule 60.

¹³² *Ibid.*, Rule 61.

¹³³ SMR, Rule 63.

¹³⁴ EPR, Rule 24.10. See also Rule 99c in a reduced version regarding untried prisoners.

Somewhat broader in scope are the standards on practicing religion. The SMR and the EPR have adopted different approaches regarding this basic human right. For the SMR it is of key importance to ensure access of the prisoners to representatives of their religion. Rule 65 provides some standards on this matter. It states that if the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion should be appointed on a part-time or full-time basis. They should have free access to the prisoners for regular services or pastoral visits in private. Prisoners who belong to minority religions also have the right to access a qualified representative, as well as the right to decline visits from any religious representatives¹³⁵. Another provision grants prisoners the opportunity, „[s]o far as practicable“ to satisfy the needs of their religious lives by attending the services organised in the prison and keeping religious books in their possession¹³⁶.

The EPR's approach is more general. It acknowledges the right of the prisoners to be able to practise their religion and beliefs. A significant aspect of the EPR's provisions is the requirement that the prison regime accommodates accordingly in order to facilitate the unobstructed practising of any religion or belief. This includes the opportunity for religious representatives to visit prisoners and for the prisoners to have in their possession religious books. The EPR also stress on the right of the prisoners not to be compelled to attend religious services, take part in religious practices or accept visits from religious representatives¹³⁷.

2.10. Access to justice

In recent years the right of the prisoners to file complaints and the procedures for reviewing these complaints generated abundant „soft“ standards by a number of international institutions. The last revisions of the SMR and the EPR are extensively focused on this topic. Moreover, the CPT dedicated a significant part of its 2018 annual report to the mechanisms of filing and reviewing complaints.

Prisoners' complaints are often the trigger that prompts the mechanisms for protection of human rights. However, the CPT has pointed out that often the complaint mechanisms for prisoners are non-existent or rife with major deficiencies. Among them are the insufficient legal basis, lack of information about the mechanisms, serious shortcomings in the investigations of complaints, lack of independence and impartiality of the investigating authorities and in-

¹³⁵ SMR, Rule 65.

¹³⁶ SMR, Rule 66.

¹³⁷ EPR, Rule 29.

sufficient protection against harassment of the complainants¹³⁸. The CPT has recommended that each complaint system in the places of deprivation of liberty is based on five principles:

- **Availability** – the system of complaints should be provided for in the national law and the persons who are entitled to formally complain are not just the affected individuals, but also third parties, such as close relatives or friends.
- **Accessibility** – persons deprived of their liberty should receive information, in a language that they understand, about the mechanisms of complaint. Good practice would be to provide appropriate standard complaint forms. Persons who need it, should receive free materials for communicating the complaint, as well as be protected against possible victimisation.
- **Confidentiality** – complainants should have direct and safe access to complaints bodies, for instance by installing locked complaint boxes.
- **Effectiveness** – complaints should be processed promptly, thoroughly and expeditiously. The complaints bodies should be independent and unbiased. Complainants should receive free legal assistance, when necessary. The investigative procedure should be fair.
- **Traceability** – the complaints system should set up a record of complaints and establish a system for compiling statistics on complaints, proceedings and outcomes¹³⁹.

The SMR and the EPR generally adhere to the above mentioned principles. Both documents provide for the possibility to address a judicial or „other independent authority“ following processing of a complaint through the prison administration¹⁴⁰. Although in principle the EPR allow and even encourage informal and alternative methods of resolving complaints, they explicitly dismiss such methods when it comes to ill-treatment and serious violations of human rights¹⁴¹. The EPR also recommend that in addition to the affected prisoners or their family and friends, complaints on behalf of prisoners can be lodged by „any other person or organisation concerned with the welfare of prisoners“¹⁴². Similar recommendation is provided in *The Havana Rules* regarding juvenile prisoners¹⁴³.

¹³⁸ CPT, Extract from the 27th General Report of the CPT, CPT/Inf(2018)4-part, 2018, § 69.

¹³⁹ *Ibid.*, §§ 75–91.

¹⁴⁰ SMR, Rule 57.1.; EPR, Rule 70.7.

¹⁴¹ EPR, Rule 70.3.

¹⁴² EPR, Rule 70.12.

¹⁴³ *The Havana Rules*, Rule 78.

2.11. Inspections and monitoring

The SMR and the EPR require from member states to establish effective procedures for inspections and monitoring inside prisons. According to the SMR, inspections can be internal and external, the latter being conducted by a body independent from the prison administration, which could be international. In both cases, the objective of the inspections should be to assess whether prisons are managed in accordance with laws and regulations¹⁴⁴. The competences of the inspectors, according to the way they are outlined by the SMR and the EPR, are very similar to those formulated in the *Optional Protocol to the Convention Against Torture*, set to address the national preventive mechanisms: right of access to all the information and records concerning the treatment of prisoners; free choice which facility to visit; right to interview prisoners in private and confidentially; authority to make recommendations to the prison administration and other competent bodies, as well as an obligation on the prison administration or national authorities to inform on actions being taken in response to the recommendations¹⁴⁵. The EPR specifically point out to the need to protect the persons providing information to monitoring bodies, against possible sanctions at the hands of the prison administration¹⁴⁶.

Neither the SMR, nor the EPR provide for a possibility for NGOs to conduct monitoring visits in prisons. The international bodies, that persistently demand that this are the OSCE and the CAT. As early as 2002, during the Supplementary Human Dimension Meeting on Prison Reform, the OSCE recommended that participating states consider providing for a firm legal basis for NGO monitoring of places of custody, including pre-trial facilities and police detention facilities¹⁴⁷. In a number of concluding recommendations after reviews of country reports, the CAT also encouraged NGO monitoring to be allowed in places for deprivation of liberty¹⁴⁸. Outside of Europe, reasonably categorical in this regard are the *Robben Island Guidelines*, which were supported by the African Commission on Human and Peoples' Rights in 2002. According to Article 42, states parties „[e]ncourage and facilitate visits by NGOs to places of detention“¹⁴⁹.

¹⁴⁴ SMR, Rule 83.

¹⁴⁵ SMR, Rules 84 and 85; EPR, Rules 93.2., 93.5 and 93.6.

¹⁴⁶ EPR, Rule 93.3.

¹⁴⁷ OSCE, *Supplementary Human Dimension Meeting on Prison Reform: Final Report*, Vienna, 8-9 July 2002, available at: <https://www.osce.org/files/f/documents/8/f/43115.pdf>, visited on 24 November 2020.

¹⁴⁸ See e.g. CAT, Concluding observations on the sixth periodic report of Bulgaria, CAT/C/BGR/CO/6, 15 December 2017, § 20b.

¹⁴⁹ ACHPR/APT, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, Geneva, May 2003, Article 42.

2.12. Protection of groups in situations of vulnerability

The ECtHR issued a number of judgments in which it defined prisoners, and any other persons who are placed in custody by a state authority, as persons in a situation of vulnerability. Therefore the state authorities were under a duty to protect them¹⁵⁰. There are however certain groups among the prisoners, which are in specific situations of vulnerability. The relevant international standards define as such women, juveniles, foreigners, ethnic minorities, indigenous peoples, etc. For some of these groups, like women and children, special documents have been adopted that contain „soft“ standards¹⁵¹. Some of the standards included in these documents, reiterate the generally applicable standards, while others define new ones, taking into account the specific situation of vulnerability of a particular group of prisoners.

The Bangkok Rules acknowledge the particular vulnerability of women due to wide-spread gender stereotypes and the risks for their isolation¹⁵². Since the share of women prisoners is significantly smaller than men, they are less likely to be accommodated in institutions located close to their families¹⁵³. This, as well as the common gender stereotypes regarding women prisoners, lead to more frequent disintegration of their families and greater social ostracism. The Bangkok Rules require that the women prisoners are allocated in facilities near their homes. The document also emphasises the special role of female prison staff, those at higher positions, but also the ones with more routine duties¹⁵⁴. The Bangkok Rules prohibit discrimination and insist on adopting positive measures for dealing with inequalities, in areas like access to professional training, health-care and contacts with families. The rules also provide for addressing the gender-specific needs of women, regarding hygiene and health-care services, which should be of equivalent standards to those in the community¹⁵⁵. A separate set of standards focuses on pregnancy, pre-natal and post-natal health-care. They require proper diet for pregnant women, ad-

¹⁵⁰ See e.g.: ECtHR, *Trubnikov v. Russia*, no. 49790/99, Judgment of 5 July 2005, § 68. See also: CEDH, *Berktaý c. Turquie*, no. 22493/93, Arrêt du 1 mars 2001, § 167; CEDH, *Algür c. Turquie*, no. 32574/96, Arrêt du 22 octobre 2002, § 44; CEDH, *Mikadze c. Russie*, no. 52697/99, Arrêt du 7 June 2007, § 109; ECtHR, *Renolde v. France*, no. 5608/05, Judgment of 16 October 2008, § 83; CEDH, *Aliev c. Géorgie*, no. 522/04, Arrêt du 13 janvier 2009, § 97.

¹⁵¹ E.g. The Bangkok Rules on women prisoners and The Havana Rules on juvenile prisoners. At the European level regarding children, such document is Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures by the Committee of Ministers of the Council of Europe (The European Rules).

¹⁵² *The Bangkok Rules*, Commentaries to Rules 45-47.

¹⁵³ SPT, Prevention of torture and ill-treatment of women deprived of their liberty, CAT/OP/27/1, 18 January 2016, § 35.

¹⁵⁴ *Bangkok Rules*, Rules 4, 10, 11 and 19.

¹⁵⁵ *Ibid.*, Rule 10.

equate medical care during pregnancy and after giving birth, as well as providing regular contact with their babies or children, while taking into account the child's best interest in deciding on their frequency or duration¹⁵⁶.

The standards on juvenile prisoners take into account their specific vulnerable position due to their lack of understanding of the law or the prison rules, the lack of or difficult access to legal aid or the complaint mechanisms, the lack of means to provide food for their sustenance when needed, the lack of family support, their physical weakness and the lack of ability to deal with potential abuse. For the purpose of dealing with these aspects of vulnerability, the international standards accentuate the positive obligations of the state to ensure maintaining regular contact between children in detention and their families and friends, including notifying family members about their arrest, visitations, communication, as well as the opportunity for family members to accompany their children during court hearings¹⁵⁷. In addition to family contacts, the international standards also provide for the unique right of children to be visited and supported by outside organisations¹⁵⁸. Another important set of standards for treatment of juvenile prisoners focuses on education and training. For children of school age, providing education, preferably at local schools in the community, is mandatory. It should be given priority over work¹⁵⁹.

Several "soft" standards acknowledge the specific vulnerability of foreign prisoners due to their social isolation, language barrier, different culture, customs and religion, the lack of family contact and connections with the outside world. Most documents concerning the treatment of foreign prisoners, focus on the possibilities of their transfer back to their country of origin for serving the rest of their sentence¹⁶⁰. Another set of standards addresses contacts with the outside world. Foreign prisoners should have quick access to their respective diplomatic missions and in case they are refugees – to a UN office or another relevant institution which can protect them¹⁶¹. Prisoners who are foreign nationals should be allowed extended visitations and other forms of contact with their families and friends. The national authorities should facilitate such contacts through providing information and financial support for covering the expenses on communication with the outside world¹⁶². In order to respond to

¹⁵⁶ Ibid., Rules 42, 48 and 49. See also above 2.6 on restrictions of using force and instruments of restraint on women.

¹⁵⁷ Directive (EU) 2016/800; see also: European Parliament, Prison systems and conditions, § 34.

¹⁵⁸ *The Havana Rules*, Rules 62 and 78; *The European Rules*, Rule 83

¹⁵⁹ *The Havana Rules*, Rule 38; *European Rules*, Rules 78.1 and 78.2; European Parliament, Prison systems and conditions, § 40. See also 2.4 above.

¹⁶⁰ EPR, Rule 37.5; *Recommendation CM/Rec(2012)12*, § 15.3.

¹⁶¹ EPR, Rules 37.1 and 37.2

¹⁶² *Recommendation CM/Rec(2012)12*, Section 22

the cultural and religious needs of foreign prisoners, a number of standards require that their preferences are taken into account regarding hygiene, clothing, diet and health-care inside prison¹⁶³. Furthermore, when it comes to translation or interpreting during criminal, administrative or disciplinary proceedings, these services must be provided for free¹⁶⁴.

Several documents by the Council of Europe contain specific „soft“ standards on treating ethnic and language minorities in prison. They focus on respecting their cultural practices and linguistic needs. The EPR require that the state provides competent interpreters and written materials in the range of languages used in a particular prison¹⁶⁵. These rules are similar to the ones stipulated in the *European rules for juvenile offenders subject to sanctions or measures*. In addition, the latter document recommends that special steps are taken to offer language courses to juveniles who are not proficient in the official language¹⁶⁶.

¹⁶³ Ibid, sections 17, 18, 19, 20 and 31.

¹⁶⁴ Ibid., § 8

¹⁶⁵ EPR, Rule 38.3.

¹⁶⁶ European rules for juvenile offenders subject to sanctions or measures, Rule 106.4.



3

CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING THE RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY IN CRIMINAL PROCEEDINGS

Of all the international human rights bodies, the ECtHR has developed the richest case-law concerning the prisoners' rights. The European Convention on Human Rights, on the interpretations of whose provisions the Court bases its jurisprudence, deals with the deprivation of liberty in criminal proceeding only in two provisions of Article 5 (the right to liberty and security of person) and one provision of Article 4 (the prohibition of slavery and forced labour). Nevertheless, by applying other provisions of the Convention in specific cases relating to imprisonment, the Court has generated a wide ranging case-law, involving almost all provisions of the Convention, as well as part of the protocols to it. The same is true for its case-law on Bulgaria. The main part of this case-law, including the pilot judgment in the case of *Neshkov and Others v. Bulgaria* of 2015, concerns poor material conditions of detention. In addition, in other judgments against Bulgaria the Court dealt with other rights of the prisoners, such as the right of access to justice, the right to private and family life, the right to correspondence, the right of education, the right of freedom of expression, the right to vote and the availability of effective domestic remedies for protection of the aforementioned and other human rights. In some of its judgments the ECtHR took the view that the "soft" international standards are not binding and so the Court did not have the obligation to abide by them. Nonetheless, in a number of its judgments the Court incorporated some of them, while in others it established its own standards which are not part of any of the „soft law“ documents of the Council of Europe and the UN. Regrettably, some of the Court's judgments seriously undermine the existing „soft law“ and thus impede its further development. In 2020, the Registry of the ECtHR published a

Guide on the case-law of the European Convention on Human Rights on Prisoners' rights, which is an excellent starting point for its analysis¹⁶⁷.

3.1. Material conditions – overcrowding

In October 2000, for the first time since its founding, the ECtHR held that the material conditions of detention in prisons fall within the scope of Article 3 of the Convention (the prohibition of torture and other inhuman or degrading treatment or punishment) in the Grand Chamber judgment in the case of *Kudła v. Poland*. The applicant, who was in detention, claimed a violation of Article 3, due to the lack of adequate medical care. The Court rejected his claim, but held that:

„[...] under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention [...]”¹⁶⁸.

Subsequently the Court reinforced this approach in a number of other cases, concerning various aspects of detention, and did not limit it to the pre-trial detention. For example, in the pilot judgment in the case of *Neshkov and Others v. Bulgaria*, the Court ruled in a similar manner regarding the detention conditions endured by several convicted prisoners in different Bulgarian prisons, which involved overcrowding of the cells, poor hygiene, use of buckets instead of toilets at night and inadequate medical care¹⁶⁹. Before the *Neshkov* case, the Court applied the same approach towards 25 similar cases against Bulgaria, concerning poor material conditions in different prisons and pre-trial detention facilities. Almost all of them showcased flagrant instances of violating the „soft“ international standards, although at the same time, just as the *Neshkov* case, they did not present a particular challenge to the Court's approach.

In a number of cases the Court found violations of Article 3, solely based on the fact that the applicant prisoners were held for extended periods of time in overcrowded cells. As a whole, up to 2016, the Court demonstrated uncertainty about adopting the „soft“ standards of other Council of Europe bodies and especially those of the CPT. When breaches of Article 3 were established

¹⁶⁷ ECtHR, *Guide on the case-law of the European Convention on Human Rights: Prisoners' rights*, Strasbourg, 2020, available in Bulgarian at: https://www.echr.coe.int/Documents/Guide_Prisoners_rights_BUL.pdf.

¹⁶⁸ ECtHR, *Kudła v. Poland*, No. 30210/96, Grand Chamber judgment of 26 October 2000, § 94.

¹⁶⁹ ECtHR, *Neshkov and Others v. Bulgaria*, Nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, Judgment of 27 January 2015, § 228.

due to overcrowding, the Court often referred to the CPT reports. On occasions, it has gone even further. For instance, shortly after the judgment in *Kudla v. Poland*, in the case of *Kalashnikov v. Russia*, the ECtHR found a violation of Article 3, due to overcrowding, taking as a reference a CPT standard for living space, which according to the Court is 7 sq. m. per person in a common cell¹⁷⁰. In reality, the CPT has never established such a standard. The reference to the CPT's 2nd General Report concerns a „desirable“ standard for one prisoner in a single, not in a common cell¹⁷¹. Subsequently, the ECtHR never used this standard again as a starting point for establishing overcrowding under Article 3.

With its Grand Chamber judgment in the case of *Muršić v. Croatia* of 2016, the ECtHR finally established its own firm standard for living space per prisoner¹⁷². This judgment to a large extent undermined the CPT standards in this area, the previous case-law of the Court, as well as the national standards of a large number of member states of the Council of Europe, including Bulgaria. In this case the applicant was convicted for robbery and theft to imprisonment of 2 years and 11 months. He served his sentence in two different prisons. The second prison, about which the applicant claimed that the material conditions had been degrading and in breach of Article 3, was the regional prison of Belovar.

Before assessing the specific conditions of the applicant's detention, the Court decided on its approach. According to it, the standard of 3 sq. m. „living space“ (which covers the cell's common space minus the space of the sanitary facility, divided by the number of inhabitants) per prisoner in a common cell is the minimum, below which a presumption for a violation of Article 3 arises. The state party might rebut this presumption by pointing out to factors, which adequately compensate the lack of sufficient space. These factors could be circumstances in which the accommodation of a prisoner in less than 3 sq. m. of living space was short, sporadic, with interruptions, and the available living space deviated slightly from this norm. Other mitigating factors could be offering of sufficient freedom of movement outside the cell and engagement in various activities. Also, the facility where the prisoner was accommodated might provide adequate conditions in other aspects.

The Court accepts that it is possible to find a violation where the living space of a prisoner is between 3 and 4 sq. m. and the insufficient living space is compounded by other inadequate conditions (lack of outdoor exercise, poor ventilation, lack of access to day light, low temperature in the cells, poor hygiene). The Court does not exclude a possibility of a breach, even in cases

¹⁷⁰ ECtHR, *Kalashnikov v. Russia*, No. 47095/99, Judgment of 15 July 2002, § 97.

¹⁷¹ See above about the standards of the CPT in 2.2.

¹⁷² ECtHR, *Muršić v. Croatia*, No. 7334/13, Grand Chamber judgment of 20 October 2016.

where the living space of a prisoners is above 4 sq. m. In those instances, the aforementioned factors are given a primary consideration.

Applying this standard to the present case, the Court accepted that the applicant had endured degrading treatment for 27 days during which time he was placed in a common cell with only 2.62 sq. m. of living space. The applicant had spent some more time within similarly sized and even smaller space in other cells, but at those times the insufficient living space was compensated by three other factors. First, his prison regime allowed him to exercise outdoors for two hours every day, as well as to move freely within the prison for three hours daily. Second, his placement on 3 sq. m. of living space was sporadic and for brief periods of time. Third, the prison in Belovar, according to the Court, offered generally adequate material conditions¹⁷³. During the periods when the applicant had inhabited living space larger than 3 sq. m., considering the other aspects of his conditions of detention, the Court did not acknowledge the presence of a presumption for inhuman and degrading treatment. The fact that the national legislation of Croatia provides for a minimum of 4 sq. m. of living space per prisoner and that therefore the applicant had been held in conditions in breach of the national law for prolonged periods of time, does not seem to have been of a decisive importance for the Court¹⁷⁴.

The standard that the ECtHR established, which guided its case-law subsequently, in effect allows for the placement of a prisoner in conditions which are extremely inadequate in terms of space. If from the 3 sq. m. of „living space“ we subtract the size of the bed, which is about 1.6 – 2 sq. m., as well as the sizes of the furniture (table, bedside cabinet, chairs), which are normally available in each cell, in reality a prisoner can use an uncovered space smaller than 1 square meter, when all the beds are placed on the floor and are not of the bunk type. Within this space a prisoner spends a considerable part of his/her life in prison, mostly lying in bed, since it is difficult to assume another position within the provided space. In the case of Muršić, this lasted 19 hours per day - 24 hours minus 2 hours of exercise outside and 3 hours free movement within the prison. These conditions are categorically incompatible with the respect for human dignity. They cannot be a standard for treating a human being in the 21st century in a democratic society, which respects the dignity and rights of everyone, including the persons deprived of their liberty. The „compensating criteria“, which the Court established, are at that quite broad and vague. They are formulated in general terms, are not measurable and allow for arbitrariness when applied.

¹⁷³ ECtHR, *Muršić v. Croatia*, §§ 54–71.

¹⁷⁴ ECtHR, *Muršić v. Croatia*, § 111.

3.2. Material conditions – other aspects

In significant number of cases the ECtHR has established breaches of Article 3 of the Convention due to the cumulative effect of various factors, related to the material conditions. Often these are aspects of material conditions in addition to the overcrowding. In another pilot judgment - *Ananyev and Others v. Russia* of 2012, the Court analysed the material conditions in which the applicants were held and outlined two major factors – the overcrowding and other aspects, including outdoor exercise, access to daylight and fresh air and access to sanitary facilities and their hygiene¹⁷⁵. While the ECtHR found problems both relating to overcrowding, as well as to the above-mentioned aspects of the material conditions, in the end the overcrowding turned out to be the decisive factor to establish a violation of Article 3¹⁷⁶.

In other cases, however, the ECtHR has been inclined to establish a breach of Article 3 by attributing more weight of the other aspects of the material conditions beyond the overcrowding. A good example in this regard is the judgment in the case of *Peers v. Greece* from 2001. The Court found a breach of Article 3 due to a treatment that was considered degrading because of the poor conditions in the applicant's cell where he had spent two months at the end of the summer and the beginning of the autumn. The cell was 4,5 meters by 2,5 meters in size. The prisoner shared this space with another inmate, so in this situation we cannot speak about overcrowding or insufficient „living space“. However, there was just one attic window in that cell, which did not open, and was so smudged by dirt that it almost did not let any daylight in. Also, there was a little hole in one of the two cell doors. The light in the cell was provided by a single bulb, not bright enough to allow for reading. The toilet in the cell was of an „Asian type“, without partition or curtain to separate it from the main space. There was no washbasin available in the cell either, and in the entire prison wing there was a single shower to serve nine cells with two to three prisoners accommodated in each. In the summer, inside the cell it was unbearably hot and there was no ventilation. The prisoner had to spend part of the evening and the whole night inside the cell. During the day he could spend time outside in a small yard. By establishing a breach of Article 3 in this case, the ECtHR focused on four elements of the material conditions: the extended periods of time during which the prisoner had to spend in the cell, the high temperatures, the lack of sufficient ventilation and the fact he had to use the toilet in the presence of his cellmate during the night¹⁷⁷.

¹⁷⁵ ECtHR, *Ananyev and Others v. Russia*, Nos. 42525/07 and 60800/08, Judgment of 10 January 2012, §§ 143–159.

¹⁷⁶ ECtHR, *Ananyev and Others v. Russia*, § 166.

¹⁷⁷ ECHR, *Peers v. Greece*, No. 28524/95, Judgment of 19 April 2001, § 75.

In other cases, including some against Bulgaria, where overcrowding was not the main problem, the Court found violations of Article 3, taking into consideration other aspects of the material conditions like: no privacy when using a toilet (especially in cases of using buckets for this purpose in the cell), bad food, poor ventilation, access to daylight and the general level of hygiene¹⁷⁸. In some cases, but only as a contributing factor, the Court acknowledged as a problem the prolonged exposure to cigarette smoke inside the cell¹⁷⁹. In a number of cases the ECtHR has pointed out that not providing enough food to prisoners could be a single reason to find a breach of Article 3 of the Convention, although in practice in all these cases the Court established other non-compliances with the standards for material conditions¹⁸⁰. In the case of *Ebedin Abi v. Turkey* of 2018, the ECtHR found a breach of Article 3 based on the fact that the applicant, who was a diabetic and had a heart condition, did not receive his special diet prescribed by a doctor. The Court approached this case from the standpoint of the failure on the part of the authorities to fulfil their positive duties to protect the health and well-being of the applicant¹⁸¹.

In some other cases, the ECtHR analysed the detention conditions from the standpoint of Article 8 of the Convention – the right to respect for private and family life, home and correspondence. This provision allows for restrictions of this right, only when they are stipulated in the domestic law in the interest of one or several legitimate aims and are necessary in a democratic society. If we consider the rather low standards for „living space“ that the Court has established, which are far below the „soft“ standards of the other bodies of the Council of Europe, we should not be surprised that the lack of accommodation of prisoners in individual cells during the night, as required by the EPR, has not motivated the Court to find a breach of either Article 3 or Article 8 of the Convention. We can only speculate about the number of applications, submitted to the Court on this ground, that were declared inadmissible.

In other cases, however, the ECtHR has found violations of Article 8 as regards detention conditions. This e.g. is the case of *Giszcak v. Poland* of 2011, where the prisoner was not provided timely and clear information on the conditions of his day release in order for him to attend his daughter's funeral.

¹⁷⁸ ECtHR, *Dobrev v. Bulgaria*, No. 55389/00, Judgment of 10 August 2006; ECtHR, *Malechkov v. Bulgaria*, No. 57830/00, Judgment of 28 June 2007.

¹⁷⁹ ECtHR, *Ostrovar v. Moldova*, No. 35207/03, Judgment of 13 September 2005, § 89. See also: CEDH, *Elefteriadis c. Roumanie*, no. 38427/05, Arrêt du 25 janvier 2011, §§ 49–55. So far the Court has not found a breach of the Convention solely on the ground that a prisoner was exposed to passive smoking.

¹⁸⁰ ECtHR, *Dudchenko v. Russia*, No. 37717/05, Judgment of 7 November 2017, § 130; CEDH, *Kadikis c. Lettonie* (no. 2), No. 62393/00, Arrêt du 4 mai 2006, §§ 55–56; ECtHR, *Stepuleac v. Moldova*, No. 8207/06, Judgment of 6 November 2007, § 55; ECtHR, *Gyuliev v. Russia*, No. 24650/02, Judgment of 19 June 2008, § 62.

¹⁸¹ ECtHR, *Ebedin Abi v. Turkey*, No. 10839/09, Judgment of 13 March 2018, § 53.

It turned out that he had to wear his prison uniform and chains¹⁸². The Court found a breach of Article 8 on account of a blanket ban on growing beards by the inmates inside a prison. According to the Court, the government had not proven that the absolute prohibition on growing beards, disregarding the hygienic, aesthetic or medical considerations, without exceptions, was justified¹⁸³.

At the same time, the Court has accepted that the requirement for prisoners to wear prison uniforms, albeit it constitutes interference in their right to private life, could pursue legitimate aims, such as the protection of public safety and the prevention of disorder and crime¹⁸⁴. This approach is a curious anachronism, which is in contradiction with the Court's approach to other aspects of the right to private life under Article 8 of the Convention.

3.3. Searches and video surveillance

The ECtHR has found that the searches of prisoners and their visitors may fall within the scope of Article 3 and Article 8 from the Convention. Whenever searches are carried out in an appropriate way, they do not breach these provisions. However, in some cases, especially when they include a strip-search, they might involve a breach of both Article 3 and Article 8. An example of a violation of Article 3 is the case of *Valašinas v. Lithuania* of 2001. During a visit the applicant received a parcel. After the visit had ended, the prisoner was subjected to a search which included a strip-search in the presence of a female officer. In addition, the officer who conducted the search, touched his sexual organs, including the testicles, bare-handed without gloves. Afterwards, without washing his hands, the officer touched the food in the parcel. The Court concluded that those actions constituted degrading treatment in violation of Article 3:

„Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity.“¹⁸⁵

¹⁸² ECtHR, *Giszczak v. Poland*, No. 40195/08, Judgment of 29 November 2011, § 39.

¹⁸³ ECtHR, *Biržietis v. Lithuania*, No. 49304/09, Judgment of 14 June 2016, § 57.

¹⁸⁴ ECtHR, *Nazarenko v. Ukraine*, No. 39483/98, Judgment of 29 April 2003, § 139; ECmHR, *T.V. v. Finland*, No. 21780/93, Decision of 2 March 1994.

¹⁸⁵ ECHR, *Valašinas v. Lithuania*, No. 44558/98, Judgment of 24 July 2001, § 117. See also: ECHR, *Wiktorko v. Poland*, No. 14612/02, Judgment of 31 March 2009, where the Court established degrading treatment of a woman, accommodated in a drunk tank, stripped forcefully by two men, then immobilised by tying her with a belt and kept tied up for ten hours.

Similarly, in the case of *Ivanchuk v. Poland* of 2001, the Court found a violation of Article 3 in an attempted strip-search of a prisoner, used as a condition for exercising his right to vote in parliamentary elections. Based on the prisoner's refusal to be strip-searched, he was prevented from voting. Moreover, the guards who attempted the search, verbally abused the prisoner referring to his body¹⁸⁶.

The ECtHR has accepted that strip-searches, when carried out in an appropriate manner, do not constitute a breach of the Convention. In the case of *S.J. v. Luxembourg (no. 2)*, the Court found no violation when a prisoner was ordered to undress in an open booth in the presence of several guards. The Court took into consideration the fact that the guards were from the same sex as the prisoner, they acted respectfully and the layout of the premises, albeit not ideal, was not a decisive factor to find a breach of Article 3 of the Convention¹⁸⁷.

When the treatment of a prisoner does not surpass the minimal threshold of severity for it to fall within the scope of Article 3, the Court could review the complaint under Article 8. This has been the case in *Dejneke v. Poland* of 2017. The applicant had been subject of strip-searches several times, but the Court found that they had not been degrading and surpassing the threshold of severity under Article 3. However the Court found a breach of Article 8. While it accepted that the interference in the right to respect of private life had been lawful and pursued a legitimate aim, it had not been necessary in a democratic society since the authorities had not provided relevant and sufficient reasons for the body searches¹⁸⁸.

The ECtHR treats the video surveillance in prison cells, exclusively through the perspective of Article 8. In the case of *Gorlov and Others v. Russia* of 2019, the Court found a violation of Article 8 in the circumstance of a continuous 24-hour video surveillance of the prisoners' cells in several prisons across Russia. The surveillance operated on the grounds of several laws. The Court found a problem with the lawfulness of this measure. According to the Court,

„[...] although the Court is prepared to accept, having regard to the ordinary and reasonable requirements of detention, that it may be necessary to monitor certain areas of pre-trial and penal institutions, or

¹⁸⁶ ECHR, *Iwańczuk v. Poland*, No. 25196/94, Judgment of 15 November 2001.

¹⁸⁷ CEDH, *S.J. c. Luxembourg (no 2)*, No. 47229/12, Arrêt du 31 octobre 2013, §§ 59–60.

¹⁸⁸ ECtHR, *Dejneke v. Poland*, No. 9635/13, Judgment of 1 June 2017, § 75. About a similar approach with an established breach of Article 8 in a case of a strip-search of the mother and the brother of a prisoner during a visitation, see ECtHR, *Wainwright v. the United Kingdom*, No. 12350/04, Judgment of 29 September 2006.

certain detainees on a permanent basis, including by a CCTV system, it finds that the existing legal framework in Russia cannot be regarded as being sufficiently clear, precise and detailed to have afforded appropriate protection against arbitrary interference by the authorities with the applicants' right to respect for their private life"¹⁸⁹.

3.4. Contacts with the outside world

The ECtHR regards the contacts with the outside world mainly through the perspective of Article 8 of the Convention. They include maintaining contacts with family and friends of the prisoners, with persons or organisations from outside, as well as the use of various means of communication. The Court has held that maintaining such contacts is an essential human right, but it is also of key importance for the re-integration of the prisoners¹⁹⁰. The Court also has affirmed the right of the prisoners to develop relations with the outside world by getting married¹⁹¹.

Important aspects of maintaining contacts with family and friends are the frequency and the character of the visits, their supervision, the possibility provided to the prisoners to create an offspring, allowing prisoners leaves to visit sick members of the family or attend funerals and the use of various means of communication with the family. All of these aspects are subject to restrictions. On one hand, the Court has held that the actual act of deprivation of liberty entails „inherent limitations“ on private and family life¹⁹². Furthermore, some limitations can be justified by the nature of the committed crime, information about an imminent threat for the order in prison or the rights and freedoms of others, as well as by the individual characteristics of the person deprived of liberty. These factors have to be considered in each individual case. The automatic restrictions on the frequency, character and duration of the visits, even in the case of life-sentenced prisoners, without assessment of proportionality, are not acceptable¹⁹³.

With regard to the conjugal visits, the ECtHR has adopted a rather restrictive approach. Although it has welcomed the ongoing reform of the European penal systems, aimed at a wider adoption of this type of visits by member states, the Court has refrained from establishing positive duties on the part of

¹⁸⁹ ECtHR, *Gorlov and Others v. Russia*, Nos. 27057/06, 56443/09 and 25147/14, Judgment of 2 July 2019, § 98.

¹⁹⁰ ECtHR, *Khoroshenko v. Russia*, No. 41418/04, Grand Chamber judgment of 30 June 2015, §§ 106, 121.

¹⁹¹ ECtHR, *Frasik v. Poland*, No. 22933/02, Judgment of 5 January 2010.

¹⁹² ECtHR, *Hagyó v. Hungary*, No. 52624/10, Judgment of 24 April 2013, § 83.

¹⁹³ ECtHR, *Trosin v. Ukraine*, No. 39758/05, Judgment of 23 February 2012, § 42.

the states to provide prisoners with regular visits of this type. In its judgment in the case of *Aliev v. Ukraine* of 2003, the Court accepted that „[...] the refusal of such visits may for the present time be regarded as justified for the prevention of disorder and crime within the meaning of the second paragraph of Article 8 of the Convention“¹⁹⁴. The Court also held that the contracting states had a wide margin of appreciation to determine whether to allow intimate visits, or not. This puzzling statement raises more questions than provides reasonable answers as to how a blanket restriction of this type is necessary in a democratic society, in particular to adequately respond to a pressing social need or to be proportionate to the pursued legitimate aim. Thereafter, the Court reaffirmed this approach in a number of subsequent judgments, including by the Grand Chamber¹⁹⁵.

In the case of *Dickson v. the United Kingdom* of 2012, the Grand Chamber found a violation of Article 8 because of the refusal by the State Secretary to allow two prisoners, a husband and wife, access to facilities for artificial insemination, which at that time in the United Kingdom was admissible for prisoners only in exceptional circumstances. The Court argued that the requirement for „exceptionality“ had placed a serious burden on the applicants. In addition, there had been no evidence that in deciding on these policies the State Secretary had the aim to weigh the relevant competing individual and public interests or to assess the proportionality of the restriction¹⁹⁶.

The ECtHR has considered several cases regarding refusals by the prison authorities to allow prisoners to visit sick relatives or to attend funerals. According to the Court, such cases fall within the scope of Article 8. At the same time, the Court has not affirmed an unconditional right of contact of a prisoner with his/her family in such situations. In order to ascertain whether there was a violation in each individual case, the Court has analysed a number of factors, such as the stage of the criminal proceedings against the applicant, the nature of the crime, the character of the applicant, the gravity of the illness of the relative, the closeness of the relative, the possibility of escorted leave, distance of the event from the prison, etc. In each individual case, this type of analysis has resulted in different findings by the Court¹⁹⁷.

¹⁹⁴ ECtHR, *Aliev v. Ukraine*, No. 41220/98, Judgment of 29 April 2004, § 188.

¹⁹⁵ E.g.: ECtHR, *Dickson v. the United Kingdom*, No. 44362/04, Grand Chamber judgment of 4 December 2012, § 81; ECtHR, *Varnas v. Latvia*, No. 42615/06, Judgment of 9 July 2013, § 109.

¹⁹⁶ ECtHR, *Dickson v. the United Kingdom*, § 83.

¹⁹⁷ ECtHR, *Płoski v. Poland*, No. 26761/95, Judgment of 12 November 2002; CEDH, *Schemkamper c. France*, no. 75833/01, Arrêt du 8 octobre 2005; ECtHR, *Lind v. Russia*, No. 25664/05, Judgment of 6 December 2007; CEDH, *Guimon c. France*, No. 48798/14, Arrêt du 11 avril 2019; CEDH, *Vetsev c. Bulgarie*, no. 54558/15, Arrêt du 2 mai 2019; ECtHR, *Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia*, Nos. 75734/12, 2695/15 and 55325/15.

The ECtHR's approach towards the use of different means of communication for keeping in contact with the outside world, is also restrictive. On one hand, the Court has established multiple breaches of Article 8, including in cases against Bulgaria, where there had been indiscriminate monitoring of prisoners' correspondence, in accordance with domestic law, irrespective of who they were corresponding with¹⁹⁸. Article 8 protects the family, the state institutions, the Ombudsman, as well as the NGOs, as addressees of correspondence with prisoners¹⁹⁹. On the other hand, the Court argued that the prisoners cannot choose the means of communication. It stated that „[a]rticle 8 of the Convention cannot be interpreted as guaranteeing prisoners the right to make telephone calls, in particular where the facilities for contact by way of correspondence are available and adequate“²⁰⁰. The Court upheld this anachronistic and excessively restrictive approach in its subsequent judgments²⁰¹. It reproduced the same approach with regards to the possibilities for prisoners to use internet-based means of communication²⁰². As a consequence, the prisoners do not have an unconditional right of access to the internet.

At the same time, the ECtHR has established violations of Article 10 of the Convention (the right to freedom of expression) in cases of refusal by the prison administration to provide prisoners the right of access to the internet. This e.g. is the case of *Kalda v. Estonia* of 2016. The applicant in this case complained about the refusal by the authorities to allow him access to three legal internet websites, administered by the state and the Council of Europe, to whose information he had no access through other means. The Court held that the contracting states had no obligation to provide prisoners with access to the internet. However, in cases where the state has allowed internet access, which is the case with Estonia, it has to present reasons for the refusal of access to the particular websites. In the specific circumstances of the case, the cited considerations of the state party, namely repercussions on the security and the possible additional expenses, were not enough to justify the interference with the right of the applicant to receive information. The domestic courts did not conduct a detailed analysis of the potential security risks in accessing the three websites in question, especially considering that they were maintained by an international organisation and by the state itself²⁰³.

¹⁹⁸ ECtHR, *Petrov v. Bulgaria*, No. 15197/02, Judgment of 22 May 2008.

¹⁹⁹ ECtHR, *Niedbala v. Poland*, No. 27915/95, Judgment of 4 July 2000; ECtHR, *Jankauskas v. Lithuania*, No. 59304/00, Judgment of 24 February 2005; CEDH, *Dimcho Dimov c. Bulgarie*, no. 57123/08, Arrêt du 16 décembre 2014.

²⁰⁰ ECtHR, *A.B. v. the Netherlands*, No. 37328/97, Judgment of 29 January 2002, § 92.

²⁰¹ See e.g.: ECtHR, *Nusret Kaya and Others v. Turkey*, Nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08, Judgment of 22 April 2014, § 36.

²⁰² ECtHR, *Ciuperescu v. Romania* (no. 3), Nos. 41995/14 and 50276/15, Judgment of 7 January 2020, § 105.

²⁰³ ECtHR, *Kalda v. Estonia*, No. 17429/10, Judgment of 19 January 2016, § 53.

In the case of *Jankovskis v. Lithuania* of 2017, the Court also found a violation of Article 10 of the Convention whereby a prisoner is refused access to the website of the Ministry of Education. In this case the Court justified its approach by pointing out to the character of the information, which was related to the social reintegration of the applicant²⁰⁴.

3.5. Health care

The ECtHR has produced substantial case-law, focused on the protection of health care of prisoners in various contexts. It is related to three provisions of the Convention – Article 2 (the right of life), Article 3 and Article 8. The Court has held that the duties of the state to protect the lives and the physical well-being of the prisoners entail duties to provide the necessary and adequate medical care²⁰⁵. The difficult question is what is implied by the requirement of necessity and adequacy of medical care provided in the places for deprivation of liberty. On one hand, the mere fact that there are medical professionals employed in prisons and that they conduct medical examinations, is not sufficient for the Court to conclude that the medical care is adequate²⁰⁶. On the other hand, the Court has stated that the Convention cannot be interpreted as imposing a general obligation to release or transfer a prisoner to a public hospital, even in cases where he/she suffers from an illness that is difficult to treat inside the prison²⁰⁷. Thirdly, the Court has held that the refusal to transfer a prisoner to a public hospital for treatment, when the health care personnel inside the penitentiary institution are not able to treat him/her, could amount to a breach of Article 3²⁰⁸.

In the Grand Chamber judgment in the case of *Blokhin v. Russia* of 2016, the ECtHR made an attempt to address the issue of the content of the general positive obligations of the state regarding the medical treatment of a detainee. According to it:

„[t]he authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention [...], that diagnosis and care are prompt and accurate [...], and that, where necessitated by the nature of a medical

²⁰⁴ ECtHR, *Jankovskis v. Lithuania*, No. 21575/08, Judgment of 17 January 2017.

²⁰⁵ ECtHR, *Paladi v. Moldova*, No. 39806/05, Grand Chamber judgment of 10 March 2009, § 71; ECtHR, *Jasinskis v. Latvia*, No. 45744/08, Judgment of 21 December 2010, § 60.

²⁰⁶ ECtHR, *Hummatov v. Azerbaijan*, Nos. 9852/03 and 13413/04, Judgment of 29 November 2007, § 116.

²⁰⁷ ECtHR, *Grimailovs v. Latvia*, No. 6087/03, Judgment of 25 June 2013, § 150.

²⁰⁸ ECtHR, *Mozier v. the Republic of Moldova and Russia*, No. 11138/10, Grand Chamber judgment of 23 February 2016, § 179.

condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis [...]. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through [...]. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities ..."²⁰⁹.

The Court thus incorporated in its case-law the principle of equivalence of health care and, albeit in general terms, outlined the scope of the positive duties of the state in providing adequate health care to prisoners.

Within the scope of positive obligations of the state regarding health care, are also the care for persons with disabilities who happen to find themselves in penitentiary institutions. For instance, when a detainee needs a tooth implant, but cannot afford to pay the part, which is not covered by his/her medical insurance, the state has the obligation to implement an insurance scheme, which can provide financial assistance in situations like this. Otherwise, there is a violation of Article 3²¹⁰. The Court took a similar approach in a case of a confiscation of the spectacles of a prisoner²¹¹, as well as in a case of a failure to provide orthopaedic footwear²¹².

One of the challenging issues in the case-law of the ECtHR is the incompatibility between the detention conditions and the state of health of a prisoner. The Court has held that this issue should be tackled in the context of the specific circumstances of each case. In one of them, where a violation of Article 3 has been found, the Court stated:

„The Court holds, [...] that to detain a person who is confined to a wheelchair and suffering from paraplegia and serious malfunctions of the urethral and anal sphincters in conditions where he does not have an unlimited and continuous supply of incontinence pads and catheters and unrestricted access to a shower, where he is left in the

²⁰⁹ ECtHR, *Blokhin v. Russia*, No. 47152/06, Grand Chamber judgment of 23 March 2016, § 137.

²¹⁰ CEDH, *V.D. c. Roumanie*, no. 7078/02, Arrêt du 16 février 2010, § 96.

²¹¹ ECtHR, *Slyusarev v. Russia*, No. 60333/00, Judgment of 20 April 2010.

²¹² ECtHR, *Vladimir Vasilyev v. Russia*, No. 28370/05, Judgment of 10 January 2012.

hands of his cellmates for the necessary assistance, and where he is unable to keep clean without the greatest of difficulty, reaches the threshold of severity required under Article 3 of the Convention and constitutes degrading and inhuman treatment contrary to that provision. The Court therefore finds a violation of this provision in the present case.²¹³

Advanced age in itself is not a condition that should be viewed as an obstacle against imposing an effective deprivation of liberty, if it is not compounded by serious health problems and the prison is capable of catering to the needs of an old prisoner²¹⁴. However, in cases where the advanced age is compounded by serious health issues, which the health care capacity of the prison is not able to address, the continuous detention of such prisoners constitutes a violation of Article 3 of the Convention²¹⁵.

The general principles of medical treatment in detention are applicable also to the specific challenges when treating infectious diseases and mental illness. In addition, regarding infectious diseases, the contracting states have the obligation to act for their prevention. Detainees should be provided free access to diagnostic tests for establishing any infectious disease. When there is an unjustified delay in the provision of access to such tests, the Court has established a violation of Article 3²¹⁶. As far as mental illness is concerned, on a number of cases the Court has argued that the prisoners with mental disorders are a specific group in a vulnerable position and certain aspects of life in prison present a much greater health risk for them, than for the ordinary prisoners²¹⁷.

The response of the prison administration towards hunger strikes of prisoners has risen various issues to the Court, including the issue of force-feeding. The cases of *Nevmerzhitsky v Ukraine* of 2005 and *Ciorap v Moldova* of 2007 involve force-feeding of prisoners who had gone on hunger strikes. The measures applied to administer force-feeding were undertaken at an early stage of their hunger strikes and lacked valid medical justification²¹⁸. The prison administrations conducted the force-feeding through means that caused severe pain and humiliation to the prisoners. They were handcuffed to a chair, a metal

²¹³ ECtHR, *D.G. v. Poland*, No. 45705/07, Judgment of 12 February 2012, § 177.

²¹⁴ CEDH, *Papon c. France*, no. 64666/01, Décision du 7 juin 2001.

²¹⁵ CEDH, *Farbtuhs c. Lettonie*, no. 4672/02, Arrêt du 2 décembre 2004.

²¹⁶ See for example ECHR, *Jeladze v. Georgia*, No. 1871/08, Judgment of 18 December 2012, § 46.

²¹⁷ ECtHR, *Rooman v. Belgium*, No. 18052/11, Grand Chamber judgment of 31 January 2019, § 145.

²¹⁸ In these cases the Court grounds its judgment on the standards of informed consent, confidentiality and treatment in cases of hunger strikes, adopted by Recommendation No. R (98) 7 of the Committee of Ministers of the Council of Europe Concerning the Ethical and Organisational Aspects of Health Care in Prison.

mouth-widener was used to fix prisoner Ciorap's mouth in an open position, while rubber tubes were used on both prisoners, through which liquidised food was poured down to their stomachs. Furthermore, due to prisoner Ciorap's resistance, his tongue was pulled out with a pair of metal tongs. These interventions, which were carried out several times per week, in accordance with the domestic law of the states, caused injuries to both applicants. On both cases the Court found torture, after it determined that the lack of valid medical justification meant that force feeding was used as a tool of coercion to force the prisoners to stop their hunger strikes by causing them unnecessary pain and humiliation²¹⁹.

However, the Court did not rule out per se the possibility of force-feeding a prisoner during a hunger strike. Whenever it is justified by medical necessity and is supported by proper procedural guarantees, such action can be undertaken²²⁰. The case-law of the ECtHR so far, however, does not provide a clear definition of the term „medical necessity“ for the purposes of determining when force-feeding could be acceptable.

3.6. Disciplinary practices, use of force and instruments of restraint

The ECtHR reiterated many times that the potential of violence always exists in the penitentiary institutions and once sparked, violence can escalate very quickly²²¹. The Court has also accepted that the use of force is sometimes necessary. The conditions and the limitations on the use of force in prison are the same as in cases of contact between law enforcement authorities and persons who are not prisoners. In both instances, according to the Court „any recourse to physical force which has not been made strictly necessary by the person's conduct, diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention“²²². The other key requirement, whenever force is applied, is to carry out effective official investigation, in case a person makes a credible allegation that he/she has been a victim of violence. In the Grand Chamber judgment in the case of *Bouyid v. Belgium* of 2015, the Court summarised its requirements to such an investigation as follows:

²¹⁹ ECHR, *Nevmerzhitsky v Ukraine*, No. 54825/00, Judgment of 5 April 2005; ECHR, *Ciorap v Moldova*, No. 12066/02, Judgment of 19 June 2007.

²²⁰ CEDH, *Rapaz c. Suisse*, no. 73175/10, Décision du 26 mars 2013.

²²¹ CEDH, *Gömi et autres c. Turquie*, no. 35962/97, Arrêt du 21 décembre 2006, § 77; ECtHR, *Tali v. Estonia*, No. 66393/10, Judgment of 13 February 2014, § 59.

²²² ECtHR, *Bouyid v. Belgium*, No. 23380/09, Grand Chamber judgment of 28 September 2015, § 100.

„Generally speaking, for an investigation to be effective, the institutions and persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of any hierarchical or institutional connection but also practical independence. Whatever mode is employed, the authorities must act of their own motion. In addition, in order to be effective, the investigation must be capable of leading to the identification and punishment of those responsible. It should also be broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly used force but also all the surrounding circumstances. Although this is not an obligation of results to be achieved but of means to be employed, any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the required standard of effectiveness. A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. The victim should be able to participate effectively in the investigation. Lastly, the investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation.“²²³

The ECtHR has found violations of both the material and the procedural obligations under Article 3 in cases of unlawful or disproportionate use of force and instruments of restraint against a number of states. These involve unlawful, indiscriminate or disproportionate use of truncheons, fists, kicks, firearms, pepper spray, as well as inadequate investigations of these incidents.

The use of handcuffs as instruments of restraint during arrest or escort of prisoners, in most cases does not entail a breach of Article 3. However, the ECtHR has found that their use in certain situations led to violations of Article 3. Such is the case with handcuffing and chaining pregnant female prisoners during gynaecological examinations and childbirth²²⁴; handcuffing a prisoner

²²³ ECtHR, *Bouyid v. Belgium*, §§ 118–123.

²²⁴ ECtHR, *Korneykova and Korneykov v. Ukraine*, No. 56660/12, Judgment of 24 March 2016.

in a hospital while awaiting an operation²²⁵; handcuffing a prisoner with cancer to his hospital bed²²⁶; the legal obligation to handcuff a female prisoner during a gynaecological examination, which led to the prisoner's decline to have the examination²²⁷; handcuffing a prisoner with mental disorder to his bed for several days²²⁸. In all of these cases, the Court found that the use of instruments of restraint was disproportionate even where it was provoked by the prisoner's behaviour. According to the Court, the severity of the imposed or prospective sentence cannot be taken as the only ground for using instruments of restraint, without considering whether this is necessary in each situation. In the rather controversial judgment in the case of *Kazakova v. Bulgaria* from 2006, the Court held that the brief handcuffing of the applicant to the radiator in the police station after her arrest, although it was not justified by her behaviour, due to its short length and the lack of public attention, did not reach the minimum level of severity of severity, required under Article 3²²⁹.

The ECtHR has found that handcuffing a prisoner during an open court hearing, where the measure had not been „reasonably necessary" but out of concerns for public safety or fair administration of justice, constitutes a degrading treatment within the meaning of Article 3 of the Convention²³⁰. It remains to be seen how the Court would elaborate on the meaning of the notion „reasonably necessary", in order to justify the use of instruments of restraint on a prisoner during a court hearing.

In the Court's case-law the disciplinary measures and punishments are viewed through the perspective of Article 3 and Article 6 of the Convention. They fall within the scope of Article 3 when they are inhuman and degrading in their nature. According to the Court, penalising a prisoner by placing him/her in a punishment cell in itself is not necessarily a breach of Article 3. Only if the conditions in the cell are inhuman and degrading can this measure be considered a violation of Article 3. Thus, for instance, on the case of *Ramishvili and Kokhreidze v. Georgia* of 2009, the ECtHR found a violation of Article 3 due to the conditions in the punishment cell, where one of the applicants was placed as a punishment for the use of a mobile phone. The cell was 5,65 sq. meters in size and the applicant shared it with another prisoner. He complained that the cell was infested with cockroaches and rats, there was no window or other ventilation, it was humid due to a leakage from the tap, constantly dripping

²²⁵ ECtHR, *Hénaf v. France*, No. 65436/01, Judgment of 27 November 2003.

²²⁶ ECtHR, *Okhrimenko v. Ukraine*, No. 53896/07, Judgment of 15 October 2009.

²²⁷ ECtHR, *Filiz Uyan v. Turkey*, No. 7496/03, Judgment of 8 January 2009.

²²⁸ CEDH, *Dimcho Dimov c. Bulgarie*.

²²⁹ CEDH, *Kazakova c. Bulgarie*, no. 55061/00, Arrêt du 22 juin 2006, § 53.

²³⁰ CEDH, *Gorodnitchev c. Russie*, no. 52058/99, Arrêt du 24 mai 2007, § 108.

for 24 hours a day. The narrow pipe in the corner of the cell was being used as a toilet, although it was not partitioned from the main space of the cell and the smell from it filled the air. The only bed, which was infested by bed bugs, was not wide enough to sleep two persons. Although the applicant spent only four days there, the Court concluded that the conditions in the cell constituted inhuman and degrading treatment in violation of Article 3²³¹. In another case the Court found a violation of Article 3 due to the placement of a prisoner with mental disorder in punishment cell for 45 days²³². In the case of *Yankov v. Bulgaria* of 2003, the Court held that the shaving of a prisoner's hair, before his placement in a punishment cell, also represented inhuman and degrading treatment in violation of Article 3²³³.

Although the ECtHR reiterated that the disciplinary proceedings may fall under the scope of Article 6 of the Convention (the right of access to court and to a fair procedure), in its case-law the Court has narrowed down the scope of application of this provision. In its older case-law it maintained that Article 6 does not apply in principle to disciplinary proceedings in prisons, unless they are related to „criminal charges“ in the autonomous meaning, which this term has assumed in the case-law of the Court²³⁴. In order to determine whether a charge is „criminal“, the Court takes into account the qualification of the offence in the national law, the nature of the offence, as well as the nature and the severity of the respective punishment²³⁵. Thus a punishment, which may result in serving additional days on top of the expected original sentence of deprivation of liberty, represents a „criminal charge“, with regards to which the guarantees of Article 6 should apply²³⁶.

This approach allows the prison administration to act in an arbitrary manner in the disciplinary practice, without any external supervision. It is an outdated approach that views prison as a realm of absolute and uncontrolled state power, which is in complete contradiction with the principles of a contemporary democratic society governed by the rule of law. In its more recent case-law, the ECtHR has allowed the application of Article 6 in its civil law limb in two hypotheses – where the domestic law recognizes and provides for the opportunity to protect before a court civil rights and obligations infringed upon

²³¹ ECtHR, *Ramishvili and Kokhreidze v. Georgia*, No. 1704/06, Judgment of 27 January 2009, § 88.

²³² ECtHR, *Renolde v. France*, No. 5608/05, Judgment of 16 October 2008, § 129.

²³³ ECtHR, *Yankov v. Bulgaria*, No. 39084/97, Judgment of 11 December 2003, § 120.

²³⁴ ECtHR, *Štitić v. Croatia*, No. 29660/03, Judgment of 8 November 2007, § 51.

²³⁵ ECtHR, *Campbell and Fell v. the United Kingdom*, Nos. 7819/77 and 7878/77, Judgment of 28 June 1984, §§ 70–72.

²³⁶ ECtHR, *Ezeh and Connors v. the United Kingdom*, Nos. 39665/98 and 40086/98, Grand Chamber judgment of 9 October 2003, §§ 128–130.

through a disciplinary penalty²³⁷ and where in a more general manner, a penalty has infringed upon individual civil rights, like for instance restriction on visits, interception of correspondence or tapping of phone calls²³⁸. In the latter case, the Court does not presuppose that the rights at stake are necessarily recognized by the national law. In the case of *Boulois v. Luxembourg* of 2012, the Court argued that such a right should be guaranteed either by domestic law or by the Convention²³⁹. This represents a broadening of the scope of application of Article 6, but even with it the case-law of the Court on the application of this article remains rather restrictive.

3.7. High-security regime and isolation

In a number of cases the ECtHR has held that high-security regime, in addition to placement in isolation, is not per se in breach of Article 3, as these measures can be legitimately imposed on dangerous criminals in the interest of public order. It might entail the separation of prisoners on high-security regime, from the rest of the prison population, and placing them under a stricter control. The purpose is to reduce the risk of escapes, attacks and causing disturbance among the prison community. Nevertheless:

„[...] the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding that unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured“²⁴⁰.

Similarly broad is the Court's standard on solitary confinement. The ECtHR does not consider that applying this measure on its own leads to a breach of Article 3. Back in its earliest case-law, in the case *Ensslin, Baader and Raspe v. the FRG* of 1978, the Commission held that „complete sensory isolation coupled with complete social isolation can no doubt ultimately destroy the personality; thus it constitutes a form of inhuman treatment which cannot be justified by the requirements of security, the prohibition on torture and inhuman treatment contained in Article 3 of the Convention being absolute in charac-

²³⁷ ECtHR, *Gülmez v. Turkey*, No. 16330/02, Judgment of 20 May 2008, §§ 28–29.

²³⁸ ECtHR, *Enea v. Italy*, No. 74912/01, Grand Chamber judgment of 17 September 2009, § 106.

²³⁹ ECtHR, *Boulois v. Luxembourg*, No. 37575/04, Grand Chamber judgment of 3 April 2012, §§ 102–104.

²⁴⁰ ECtHR, *Piechowicz v. Poland*, No. 20071/07, Judgment of 17 April 2012, § 162.

ter"²⁴¹. Subsequently, the Court has repeatedly reaffirmed this approach. However, neither the Court, nor the Commission before it, defined in clear terms what constitutes solitary confinement. Instead, they make an assessment based on the specific circumstances of the case and take into consideration various factors, such as its duration and the possible harmful effects on the applicants. Thus, in the case of *Ensslin, Baader and Raspe v. the FRG*, the Commission found that the applicants had not been placed in solitary confinement and therefore their reference to Article 3 of the Convention was groundless. Although the applicants had been locked for over five years in single cells and had been isolated from the general prison population, they had at their disposal a radio and later a television and a gramophone, which they could use without restrictions. Their families and lawyers visited them multiple times. During certain periods the prisoners were also given the opportunity to spend some time (several hours per day) together as a group or with other prisoners. This opportunity had been taken away a few times because of offenses against the prison rules or attacks by their associates from the Red Army Faction on the general public outside prison. Although the Commission's approach towards solitary confinement is at odds with the standards of the SMR and the EPR, later on the Court did not seem to have departed from it.

In this regard, quite controversial are the ECtHR Grand Chamber judgments in the cases of *Öcalan v. Turkey of 2005* and *Ramirez Sanchez v. France* of 2006. In both cases the applicants were considered dangerous terrorists. Hence, in its assessment of the compliance of solitary confinement with the standards of Article 3, the Court took into special consideration the multiple risks that the applicants presented by virtue of their terrorist activities. In the case of *Öcalan v. Turkey*, the ECtHR did not establish a breach of Article 3, although the duration of the applicant's solitary confinement continued for six years. Abdullah Öcalan, the leader of the terrorist Kurdistan Workers' Party, was the sole prisoner in a prison located on Imrali island, which is difficult to access, especially in adverse weather conditions. According to the Court, the material conditions in which the prisoner was serving his life sentence did not pose a problem of compliance with Article 3. The Court reiterated its position about the destructive effects of the complete sensory isolation, at the same time arguing that the applicant was not held in such conditions. He apparently had contacts with prison staff as well as access to books, newspapers and radio, although he could not use television or phone. He was examined by a doctor every day and once a week he was visited by family members and his

²⁴¹ ECmHR, *Ensslin, Baader and Raspe v. the FRG*, No. 7572/76, 7586/76 and 7587/76, Decision of 8 July 1978, DR 14, p. 109–110.

lawyers. In addition, he had an unrestricted right to written correspondence. Although the Court advised that the applicant should be provided more opportunities for human contact in the future, it nevertheless concluded that the six-year long isolation under these conditions had not reached the minimum level of severity for it to be considered as a violation of Article 3²⁴². The Court accepted the arguments of the Turkish government about the necessity and the conditions of the solitary confinement imposed on the applicant, as justified by the risks involved regarding the possibility that his associates may attempt to organise his escape, as well as by possible attacks on his life from other prisoners. In a similar manner, in July 2006, the ECtHR's Grand Chamber concluded in the case of *Ramirez Sanchez v. France* that the infamous terrorist Ilich Ramirez Sanchez, also known as Carlos the Jackal, who was held in solitary confinement by the French authorities for eight years and two months, had not been treated in a manner that had reached the „minimum level of severity“, so that his treatment had been in breach of Article 3 of the Convention. In this case the applicant's regime involved being locked for 22 hours per day in a cell sized 6.84 square meters, which had a table, bed and a sanitary facility. The applicant was denied contact with the other prisoners or with the prison administration. He was escorted for outdoor exercise for two hours every day, without the presence of other people. He had access to newspapers and television. The only visitors he was allowed to communicate with were his lawyers and once monthly – a priest. Between October 2002 and March 2004, the applicant was placed in a general regime, however following a television interview in which he refused to show regret, he was reinstated to a solitary confinement regime, under which he was held between March 2004 and 5 January 2006²⁴³.

In a number of cases the Court found violations of Article 3 due to the isolation of prisoners, which was too harsh or too extended. Thus, in the case of *Harachiev and Tolumov v. Bulgaria* of 2014, the Court found a violation of Article 3 on the grounds that the two applicants, serving life sentences, had been held in isolation required by their regime, whereby albeit not complete, their isolation had carried on for 12 and 14 years respectively. According to the Court

„[i]n such circumstances, isolation should be justified by particular security reasons obtaining throughout the duration of this measure. It can hardly be accepted that this was automatically necessary solely on account of the applicants' sentences to whole life and life impris-

²⁴² ECtHR, *Öcalan v. Turkey*, No. 46221/99, Grand Chamber Judgment of 12 May 2005, §§ 194, 196.

²⁴³ ECHR, *Ramirez Sanchez v. France*, No.59450/00, Grand Chamber judgment of 4 July 2006, §§ 131–135.

onment respectively as an inherent part of the relevant punishment for at least the initial five years of the sentence²⁴⁴.

The ECtHR also found violations of Article 3 in the case of *Onoufriou v. Cyprus of 2010*, where the applicant was kept in solitary confinement for 47 days in a cell of just under 6 square meters. Although the prisoner had been taken out of the cell seven times for escort to the court and back, during the rest of the time he had been allowed to leave it daily for very short periods of time. His contacts were restricted to members of the prison staff and the court. During that time, he was not allowed a single family visit, although written correspondence was permitted. With regard to this, the Court found a separate violation of Article 8²⁴⁵. A key factor in finding violations in this case was also the lack of procedural guarantees for protection against arbitrary decisions in imposing solitary confinement.

In another case, *Csüllög v. Hungary of 2011*, the Court found a violation of Article 3 on the grounds that the applicant was placed in extended solitary confinement, in a separate prison section, where normally dangerous prisoners were accommodated. The applicant spent in isolation two years and one month in total. He was held in a single cell and every time he was escorted out of it, he was handcuffed. The cell was lit by artificial light, there was no sufficient ventilation, the toilet had no seat or a cover. Every day the applicant was strip-searched. He was allowed visits from family and friends, access to books and television, and visits from a priest. The Court concluded that the applicant's sensory isolation was not complete, but only partial and relative. Nevertheless, the stringent regime imposed for a prolonged period of time, coupled with serious restrictions and suffering had surpassed the minimum level of severity required by Article 3 of the Convention²⁴⁶.

It is obvious that in its case-law regarding the special regimes and solitary confinement the ECtHR has made a distinction between prisoners sentenced for terrorism and the rest of the prisoners. With regards to the latter group, the Court is more often inclined to find violations of Article 3 on grounds of harsher and prolonged isolation, whereas in the cases of applicants sentenced for terrorism, the Court is far more restrictive and in this way seriously undermines the „soft“ standards in this area.

²⁴⁴ ECtHR, *Harachiev and Tolumov v. Bulgaria*, Nos. 15018/11 and 61199/12, Judgment of 8 July 2017, § 204.

²⁴⁵ ECtHR, *Onoufriou v. Cyprus*, No. 24407/04, Judgment of 7 January 2010, §§ 57–97.

²⁴⁶ ECtHR, *Csüllög v. Hungary*, No. 30042/08, Judgment of 7 June 2011, §§ 32–38.

3.8. Access to Justice

The ECtHR's case-law on access to justice covers a limited number of issues which normally concern access to legal assistance and the effective participation in judicial proceedings, including proceedings before the ECtHR. Access to legal assistance in criminal proceedings is a broad topic, which concerns both prisoners, as well as other accused who are not detained. The directives (the Stockholm Directives) and the recommendations in the framework of the *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings of the Council of the EU*, create a comprehensive legal framework of the right to access to a legal defence and assistance, as well as all related rights²⁴⁷. The standards, which the ECtHR established in its case-law are lower than the ones set in the Stockholm Directives. Unlike them, the Court has assessed the adequacy of the access to legal defence in relation to the fairness of the proceedings as a whole and only after they were concluded²⁴⁸.

An important sphere of standard-setting on access to legal defence in the case-law of the Court is the confidentiality of the communication between the detainees and their lawyers, as well as of their correspondence. As a principle, the correspondence between the detainee and the defence lawyer must be privileged²⁴⁹. This means that the correspondence can be intercepted only in exceptional circumstances, for example if a letter is a threat to prison order or the security of other people, albeit this should only be carried out if special measures against arbitrariness are taken.

Another aspect of the effective access to legal defence is the opportunity for the lawyer and the detainee to maintain effective communication during the court proceedings. In the case of *Insanov v. Azerbaijan* of 2013 such communication was not possible since the detainee was placed in a metal cage during the court hearings and therefore his communication with the lawyer could be overheard by the other participants and the audience. The Court therefore found a violation of Article 6 of the Convention²⁵⁰. Placing detainees in metal cages during court hearings not only impedes their communication with their lawyers, but also prevents them from effectively participating in the entire process²⁵¹.

²⁴⁷ See Kanev, K. *International standards on the right of legal defence and assistance for suspects and accused persons in criminal process*. Sofia, BHC, 2018, available at: https://www.bghelsinki.org/media/uploads/bg_international_standards_legal_defense.pdf (in Bulgarian, accessed on 9 December 2022).

²⁴⁸ See e.g.: ECtHR, *Simeonovi v. Bulgaria*, No. 21980/04, Grand Chamber judgment of 12 May 2017.

²⁴⁹ ECtHR, *Yefimenko v. Russia*, No. 152/04, Judgment of 12 February 2013, § 144.

²⁵⁰ ECtHR, *Insanov v. Azerbaijan*, No. 16133/08, Judgment of 14 March 2013, §§ 168–171.

²⁵¹ ECtHR, *Svinarenko and Slyadnev v. Russia*, Nos. 32541/08 and 43441/08, Grand Chamber judgment of 17 July 2014, § 134.

In several cases the ECtHR has ruled that in civil lawsuits it can be allowed to adopt simplified procedures for prisoners, including the possibility of carrying out a „written“ process, given that it meets all the requirements for a fair procedure under Article 6, §1 of the Convention. Under such procedure the parties should be able to ask for a public hearing²⁵². In any case, it needs to be verified whether the personal attendance of the plaintiff is „[...] an important part of the plaintiff's presentation of the case, and virtually the only way to ensure adversarial proceedings“²⁵³.

The right of the prisoners to submit applications to the ECtHR and to communicate freely with the Court is an integral part of their access to justice. Article 34 of the Convention requires commitment on the part of the contracting states to refrain from creating obstacles for the effective exercise of the right to individual application. In a number of cases the ECtHR has found violations of this provision where the prison administration or other state authorities had threatened or had performed other illegal acts in order to deter or discourage prisoners to exercise their right to complain. There are cases not only of direct pressure against applicants, but also against third parties who have helped prisoners to submit their applications²⁵⁴. Moreover, the mere interception or hindrance by the prison administration of letters addressed to the Court, which could have the effect of intimidation, constitutes a breach of Article 34²⁵⁵.

According to the Court, the obligation of the state not to obstruct the right of individual petition, does not automatically mean that the state is obliged to provide applicants with copies of all sorts of papers or to provide the technical means for producing such copies. However, Article 34 of the Convention can impose on state authorities a duty to provide copies of documents to applicants who are in situations of particular vulnerability and dependency and are not able to obtain the necessary documents for their cases without specific support from the state²⁵⁶.

²⁵² ECtHR, *Altay v. Turkey* (no. 2), No. 11236/09, Judgment of 9 April 2019, § 77.

²⁵³ ECtHR, *Kovalev v. Russia*, No. 78145/01, Judgment of 10 May 2007, § 37; ECtHR, *Margaretić v. Croatia*, No. 16115/13, Judgment of 5 June 2014, § 128.

²⁵⁴ See for example ECtHR, *Şarlı v. Turkey*, No. 24490/94, Judgment of 22 May 2001, §§ 85–86.

²⁵⁵ ECtHR, *Klyakhin v. Russia*, No. 46082/99, Judgment of 30 November 2004, §§ 116–123.

²⁵⁶ ECtHR, *Cano Moya v. Spain*, No. 3142/11, Judgment of 11 October 2016, § 50.

3.9. Freedom of religion and freedom of expression

The guiding principles behind the ECtHR's case-law regarding freedom of religion under Article 9, and freedom of expression under Article 10 of the Convention, are identical to those applicable to the general community. Prisoners have the right to both freedoms, subject to limitations that are necessary in a democratic society in the interests of one or several aims explicitly formulated in the respective provisions. In the prison context, however, the Court has adopted an approach, which allows for greater limitations, than those allowed in the society.

Thus in the case of *Donaldson v. the United Kingdom* of 2011, the Court, when considering the possibility of limiting freedom of expression inside prison held that „[a]ny restrictions on this or any other right must be justified, although such justification may well be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment“²⁵⁷. Such a generalisation does not seem justified and allows for a blanket approach to restrictions of the rights under the Convention in the prison context.

The ECtHR has established violations of Article 9 of the Convention in cases where prisoners could not meet with representatives of their religious denomination, as they were denied access to them by the prison administration²⁵⁸; where prisoners were prevented from attending religious services and had their religious literature confiscated²⁵⁹; where a prisoner had not been served a special diet in accordance with his religious beliefs²⁶⁰.

The Court has found violations of Article 10 of the Convention in a number of cases, including some against Bulgaria. In the case of *Yankov v. Bulgaria* of 2003, the Court held that punishing a prisoner by placing him in an isolation cell for seven days, on the grounds of the contents of a manuscript containing offensive comments about the Bulgarian judiciary and the penitentiary system, had not been necessary in a democratic society within the meaning of Article 10, §2 of the Convention. According to the Court:

²⁵⁷ ECtHR, *Donaldson v. the United Kingdom*, No. 56975/09, Decision of 25 January 2011, § 18.

²⁵⁸ ECtHR, *Mozier v. the Republic of Moldova and Russia*, No. 11138/10, Grand Chamber judgment of 23 February 2016, §§ 197–199; ECtHR, *Poltoratskiy v. Ukraine*, No. 38812/97, Judgment of 29 April 2003, §§ 163–171.

²⁵⁹ ECtHR, *Kuznetsov v. Ukraine*, No. 39042/97, Judgment of 29 April 2003, §§ 143–151; ECtHR, *Moroz v. Ukraine*, No. 5187/07, Judgment of 2 March 2017, §§ 104–109.

²⁶⁰ ECtHR, *Jakóbski v. Poland*, No. 18429, Judgment of 7 December 2010, § 48–55.

„[...] it cannot be accepted that a fair balance was struck between the competing rights and interests: the applicant's right to freedom of expression on the one hand and the need to maintain the authority of the judiciary and to protect the reputation of civil servants. By punishing the applicant, a prisoner, with seven days' confinement in a disciplinary cell for having included moderately offensive remarks in a private manuscript critical of the justice system, which had not been circulated among the detainees, the authorities overstepped their margin of appreciation”²⁶¹.

The ECtHR found violations of Article 10 in the case of *Marin Kostov v. Bulgaria* of 2012, as well as in the case of *Shahanov and Palfreeman v. Bulgaria* of 2016. Both cases concern imposing disciplinary punishments on the applicants as a consequence of complaints they had filed to a prosecutor, to the prison governor and to the Minister of Justice, regarding alleged violations by prison staff or guards. According to the Court, the disciplinary punishments were not necessary in a democratic society²⁶².

In a number of prisoners' cases the Court has found no violation of Article 10. For instance, in the case of *Nilsen v. the United Kingdom* of 2008, the Court argued that the confiscation of a manuscript from a prisoner, in which he described his crimes, had been justified by the purpose of protecting the health or morals and the protection of the reputation or the rights of others²⁶³. In a similar way, the Court accepted as justified the ban on a prisoner to wear in the common areas of the prison, the emblem of the Easter lily – a symbol of the deceased republicans in Northern Ireland in 1916. According to the Court, „in times of conflict, prisons are characterised by an acute risk of disorder and emblems which are more likely to be considered offensive are also more likely to spark violence and disorder if worn publicly”²⁶⁴. In the case of *Bidart v. France* of 2015, the Court did not find a violation of Article 10 regarding the ban on a prisoner from distributing information about the terrorist crime, for which he had been tried, as part of the conditions for his potential early release from prison²⁶⁵.

²⁶¹ ECtHR, *Yankov v. Bulgaria*, 143.

²⁶² ECtHR, *Marin Kostov v. Bulgaria*, No. 13801/07, Judgment of 24 July 2012; ECtHR, *Shahanov and Palfreeman v. Bulgaria*, Nos. 35365/12 and 69125/12, Judgment of 21 July 2016.

²⁶³ ECtHR, *Nilsen v. the United Kingdom*, No. 36882/05, Decision of 9 March 2010.

²⁶⁴ ECtHR, *Donaldson v. the United Kingdom*, § 29.

²⁶⁵ CEDH, *Bidart c. France*, no. 52363/11, Arrêt du 12 novembre 2015.

3.10. Education and work

Article 4 of the European Convention on Human Rights prohibits slavery and forced labour. However there is a qualification: „For the purpose of this Article the term „forced or compulsory labour" shall not include: [...] any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention". Several other international treaties contain similar provisions. With this broad formulation, the provision reaches too far, allowing for the possibility that all categories of persons deprived of their liberty under Article 5, including e.g. the ones suffering from infectious diseases or foreign detainees, held for deportation, to be forced to work. This creates challenges in the interpretation. What kind of labour is implicated by this provision: cleaning the cells and the common parts in the detention facility; work inside prison, organised and managed by the prison administration or allowing prisoners to work for private persons or companies? These are different hypotheses, towards which we need to apply different standards. The standards should concern the length, the remuneration, the working conditions, the insurance for unemployment, the pension insurance, etc.

One of the reasons to exclude the prohibition of forced labour when it concerns convicted prisoners, is that the work, which they perform, is different from the one that free individuals do, since its goal is their rehabilitation and reintegration in society. As far as the ultimate aim of a punishment is indeed the rehabilitation and reintegration of convicted prisoners, a form of compulsion into doing some work is considered acceptable. However, this justification alone is not satisfactory, since Article 4 prohibits forcing labour upon sentenced persons, who have not been deprived of liberty, for whom rehabilitation and reintegration in society are also among the key goals of the punishment.

Ever since its earliest case-law, the ECtHR has adopted the position that prisoners can be compelled to work. Moreover, their conditional release can be justified with an accumulated sum received for their work done in prison²⁶⁶. Contrary to the SMR and the EPR standards, the Court has adopted and continues to maintain the Commission's approach since 1968, according to which, there did not exist "an unconditional obligation under Article 4 of the Convention to remunerate the work of all detainees in all circumstances"²⁶⁷. The Court has also dismissed prisoners' applications which complain about low remuneration. The Court has also maintained that the state is obliged to protect

²⁶⁶ ECtHR, *Van Droogenbroeck v. Belgium*, No. 7906/77, Judgment of 24 June 1982, § 59.

²⁶⁷ ECtHR, *Zhelyazkov v. Bulgaria*, No. 11332/04, Judgment of 9 October 2012, § 36.

prisoners against potential occupational injuries²⁶⁸.

With regards to the obligation of the states to integrate working prisoners into the social insurance system, the ECtHR has adopted a relatively low standard with the Grand Chamber judgment in the case of *Stummer v. Austria* of 2011. The applicant was a prisoner who had served 28 years in prison, a significant part of that time having worked in the prison kitchen or in the bakery. However, he was not integrated into the national insurance system, since Austria's legislation does not allow that. Therefore, after his release he was not eligible for a pension, although he did receive some monthly social benefits, which as a sum was below the official minimum pension in the country. The ECtHR approached this case mainly through the perspective of Article 14 (prohibition of discrimination) in relation to Article 4 of the Convention and separately from the perspective of Article 4. The Court did not find a breach of Article 14, arguing that the exclusion of prisoners from the social insurance system in Austria had a „reasonable foundation" and was within the margin of appreciation of the contracting state²⁶⁹. Obviously, the Court did not deem it significant that over half of the member states had integrated their prisoners within their pension insurance systems. The ECtHR attached more importance to the fact that albeit excluded from the pension system, the prisoner had been receiving monthly social benefits.

When it comes to education in prison, the standards, which the ECtHR has set are also relatively low. They are significantly lower than the requirements laid out by Recommendation Rec(89)12 on Education in Prison²⁷⁰. The Court's case-law is based on Article 2 of Protocol No. 1 to the Convention providing for the right to education. The Court has adopted the position that this provision did not oblige the state parties to set up educational institutions for prisoners where there are none already existing. However, wherever such institutions exist, the authorities cannot deny prisoners access to them, unless there is a specific assessment that the restriction is pursuing a legitimate aim and is proportionate to this aim. Thus, in the case of *Velyo Velevev v. Bulgaria* of 2014, the Court found a violation of Article 2 of Protocol No.1 on the ground that a sentenced prisoner, serving in the Stara Zagora Prison, was denied education in the prison school without a due assessment of the legitimacy and the proportionality of the refusal²⁷¹.

Similarly, the ECtHR found a violation of Article 2 of Protocol No. 1 in the case of *Mehmet Reşit Arslan et Orhan Bingöl c. Turquie* of 2019. The two ap-

²⁶⁸ ECtHR, *Gorgiev v. the former Yugoslav Republic of Macedonia*, No. 26984/05, Judgment of 19 April 2012, § 68.

²⁶⁹ ECtHR, *Stummer v. Austria*, No. 37452/02, Grand Chamber judgment of 7 July 2011, §§ 109–110.

²⁷⁰ See 2.4. above.

²⁷¹ ECtHR, *Velyo Velevev v. Bulgaria*, No. 16032/07, Judgment of 27 May 2015.

plicants are life prisoners who had decided to continue their higher education, which was interrupted by their conviction. Turkey's national law provides for that and even allows prisoners to use the internet, whenever that is necessary for their studies. The applicants, however, were refused this opportunity, on the grounds that one of them had been punished multiple times, whilst the other was suspected of intending to maintain contact with a terrorist organisation. After deliberating over all the circumstances, the Court concluded that the national courts had not struck a fair balance between the applicants' rights to education and the requirements to maintain public order²⁷².

As a whole, the Court's reluctance to impose positive obligations upon the states parties to maintain educational institutions inside prisons, undermines the very idea of the right to education. The provision of Article 2 of Protocol No. 1 does not impose any self-restraint on the part of the Court. It is entirely a matter of its interpretation in the Court's case-law. On this issue the latter is highly restrictive to a degree of rendering the right to education of the prisoners devoid of meaning, even though it is of key importance for their rehabilitation and social reintegration.

3.11. Right to vote

Unlike the right to education, the right of the prisoners to vote has been strengthened in the ECtHR's case-law through a progressive evolutive interpretation of the provision of Article 3 of Protocol No. 1 to the Convention. This provision requires from the contracting states to hold „free elections at reasonable intervals by secret ballot under conditions which will ensure the free expression of the opinion of the electorate in the choice of the legislature“. Article 3 of Protocol No. 1 therefore is not applicable to local elections or other types of elections for national bodies without the authority to create laws, like for instance the presidential elections in Bulgaria.

The right of the prisoners to vote in legislative elections was established in the ECtHR's case-law at a relatively late stage. The landmark judgment is of the Grand Chamber in the case of *Hirst v. the United Kingdom (no. 2)* of 2005. The applicant and other prisoners, who were serving prison sentences in the United Kingdom, were denied the right to vote in parliamentary elections as provided for by the national law. According to the Court, under the Convention system, where tolerance and broadmindedness are the acknowledged hallmarks of a democratic society, there is no place for „automatic disenfranchisement based purely on what might offend public opinion“²⁷³. In this case

²⁷² CEDH, *Mehmet Reşit Arslan et Orhan Bingöl c. Turquie*, nos. 47121/06, 13988/07 et 34750/07, Arrêt du 18 juin 2019, § 72.

²⁷³ ECtHR, *Hirst v. the United Kingdom (no. 2)*, § 70.

the Court made a reference to the *Code of Good Practice in Electoral Matters* by the Venice Commission of 2002, where it is stipulated that the rights to vote and to be elected can be restricted only in the presence of four cumulative conditions: a possibility for a deprivation of those rights must be provided for by the national law; the principle of proportionality should be observed and the conditions for depriving individuals of the right to stand for election should be less strict than for disenfranchising them; the deprivation of those rights could be justified by mental incapacity or by a criminal conviction for a serious offence; deprivation of political rights or establishing mental incapacity can only be decided by a court of law²⁷⁴. The ECtHR attempted to establish the presence of a „European consensus“ on the matter, but found that at the time of the judgment in 18 states the prisoners enjoyed the unconditional right to vote; in another 13 this right was restricted by law; and in another 12 the right could be restricted in one way or another.

Following the *Hirst* judgment, the ECtHR found a violation of Article 3 of Protocol No.1 on similar grounds against several other contracting states. In the case of *Kulinski and Sabev v. Bulgaria* of 2016, the Court found a violation of the same provision due to the blanket prohibition of voting imposed on all persons deprived of their liberty pursuant to Article 42, §1 of the Constitution of the *Republic of Bulgaria*²⁷⁵.

In its subsequent case-law the ECtHR revised its approach from *Hirst*. An example of such a revision is the case of *Scoppola v. Italy* (no. 3) of 2012, where the Grand Chamber did not find a violation of Article 3 of Protocol No. 1, although the Italian law provides for deprivation of the right of the prisoners to vote if they have prison sentences for specific crimes against the state and the judicial system, as well as for crimes which are punished by three or more years of imprisonment. According to the Court, such legislative provisions demonstrate the legislature's concern to adapt this measure to the particular circumstances of each case, taking into account such factors as the gravity of the committed crime and the conduct of the offender. Therefore, it could not be concluded that the Italian system had adopted a general, automatic and indiscriminate approach where the authorities had overstepped the margin of appreciation in this sphere²⁷⁶. With this judgment, however, the Court disregarded the requirement by the Venice Commission that disenfranchisement should be imposed only by a court decision.

²⁷⁴ ECtHR, *Hirst v. the United Kingdom* (no. 2), §§ 32, 71.

²⁷⁵ ECtHR, *Kulinski and Sabev v. Bulgaria*, No. 63849/09, Judgment of 21 July 2016. Since *Kulinski* the Court found violations of Article 3 of Protocol No. 1 also in the case of *Dimov and Others v. Bulgaria* (No. 45660/17 et al., Judgment of 8 June 2021), as well as in the case of *Tingarov and Others v. Bulgaria* (No. 42286/21, Judgment of 10 October 2023).

²⁷⁶ ECtHR, *Scoppola v. Italy* (no. 3), No. 126/05, Grand Chamber judgment of 22 May 2012, §§ 106–109.

3.12. Prohibition of discrimination

Segregation in accommodation and discriminatory treatment of different groups of prisoners, as well as the need for positive measures in the interest of the groups and persons in situations of vulnerability in prisons, have allowed for bringing before the ECtHR a number of issues relating to discrimination. The Court has considered this type of applications under Article 14 of the Convention, which prohibits discrimination in the exercise of rights and freedoms, guaranteed by it, on the grounds of a number of grounds, including „other status“. In its case-law, when deciding cases of discrimination, the Court has applied a two-level analysis, which is based on responses to the following questions:

1. Has there been a difference in treatment of persons in analogous or relevantly similar situations – or a failure to treat differently persons in relevantly different situations?
2. If so, is such difference – or absence of difference – objectively justified? In particular:
 - a) Does it pursue a legitimate aim?
 - b) Are the means employed reasonably proportionate to the aim pursued²⁷⁷?

The key case of the ECtHR case-law on protection against discrimination in the context of imprisonment is the Grand Chamber judgment in the case of *Khamtokhu and Aksenchik v. Russia* of 2017. The applicants, who were respectively 47 and 32-year-old, were sentenced to life imprisonment. They claimed that they were discriminated against on the basis of age and sex, since juveniles, persons over 65 and women could not be sentenced to life imprisonment under the national law. The Court did not find a violation of Article 14 in conjunction with Article 5 of the Convention. It held that there had been a difference in treatment of the applicants compared to other prisoners in analogous or relevantly similar situations, however this difference pursued a legitimate aim – taking into account the age and the „psychological characteristics“ of the different categories of offenders, and the means employed had been reasonably proportionate of the aim pursued. The Court pointed out that there was a „European consensus“ among all member states about not imposing life sentences on juveniles. In certain states the regime of punishment for older adult offenders is different from the one for young adults. In some cases such differences are present in the sentencing regimes for some categories of wom-

²⁷⁷ ECtHR, *Molla Sali v. Greece*, No. 20452/14, Grand Chamber judgment of 19 December 2018, § 135.

en, or for women in general. In the present case, the Russian authorities had a wide margin of appreciation, which they had not overstepped.

„It therefore appears difficult to criticise the Russian legislature for having established, in a way which reflects the evolution of society in that sphere, the exemption of certain groups of offenders from life imprisonment. Such an exemption represents, all things considered, social progress in penological matters.“²⁷⁸

In conformity with the standard in *Khamtokhu and Aksenchik v. Russia*, in the case of *Alexandru Enache v. Romania* of 2017, the ECtHR held that the difference in treatment of men and women, set in the national law, which allows for a postponement of an execution of the sentence deprivation of liberty for mothers with young infants, but not for fathers, is not in breach of Article 14 in conjunction with Article 8 of the Convention. This difference is justified by the specific circumstances regarding pregnancy and the first months of the life of a child, as well as by the „special ties“ between the mother and the child in this period²⁷⁹.

Although according to *Khamtokhu and Aksenchik*, some significant differences in the sentencing regime between men and women were justified, the Court held that discrimination in the treatment had to be assessed on case-by-case basis from the standpoint of the aim and the proportionality of the means for its achievement. In the case of *Ēcis v. Latvia* of 2019, the Court found a violation of Article 14 in conjunction with Article 8 of the Convention regarding a blanket ban on leave from prison for the purpose of attending a funeral of a family member. This concerned a certain category of men who could present a security threat, unlike the women prisoners, for whom this ban did not apply. The Court agreed with the arguments of the government that there was no objective need to subject women prisoners to conditions that are stricter than necessary. The Court emphasised however that this principle was equally applicable to male prisoners when it came to exercising a right for whose protection the authorities have the positive obligation to assess all specific circumstances²⁸⁰. Compared with the wide margin of appreciation on the different treatment of men and women, which the ECtHR granted to the national authorities in the case of *Khamtokhu and Aksenchik*, the Court's approach on

²⁷⁸ ECtHR, *Khamtokhu and Aksenchik v. Russia*, No. 60367/08, Grand Chamber judgment of 24 January 2017, § 86.

²⁷⁹ ECtHR, *Alexandru Enache v. Romania*, No. 16986/12, Judgment of 3 October 2017, § 76.

²⁸⁰ ECtHR, *Ēcis v. Latvia*, No. 12879/09, Judgment of 10 January 2019, § 91.

Ēcis seems like a departure from that standard. The blanket ban on a certain category of male prisoners to attend funerals of relatives is unacceptable, but it should be considered under Article 8, rather than under Article 14 of the Convention, where the margin of appreciation granted by the Court seems wider.

In the case of *Clift v. the United Kingdom* of 2010, the ECtHR found a violation of Article 14 in conjunction with Article 5 of the Convention, due to the lack of justification for the discrimination in treatment for the purpose of release on parole, of prisoners with different sentence lengths. In particular, the applicant who was serving a 15-year sentence, had to receive an additional approval for his parole by the Secretary of State, whom those with shorter sentences did not have to approach. According to the Court, the risk assessment of each individual prisoner, based on publicly announced criteria, was a task which was at the relevant time recognised to have no political content and one to which the Secretary of State could not, and did not claim to, bring any superior expertise²⁸¹.

Apart from the case of *Clift*, the Court found discrimination in several other cases, related to „other status“. They concern the unjustified different and more restrictive treatment of the visits of detainees in remand facilities, compared to those in prisons²⁸²; the unjustified different and more restrictive treatment of the unsentenced prisoners, compared to the sentenced prisoners, regarding the spousal visits²⁸³; the unjustified difference in treatment between the sentenced and the unsentenced prisoners regarding the possibilities of early release, when suffering from a terminal illness²⁸⁴; the separation and accommodation in the psychiatric wing of the building of HIV-positive prisoners²⁸⁵; keeping a LGBTIQ prisoner in an isolation cell for eight months in order to protect him from the other prisoners²⁸⁶.

3.13. The right to an effective domestic remedy

Article 13 of the Convention requires that everyone whose rights and freedoms, as set forth in it, are violated, should have an effective remedy before a national authority. This provision, as well as Article 14, are only applied together with other substantive provisions of the Convention. The ECtHR has held that the various domestic remedies should be available and applicable, depending on the character of the violation. When it comes to violence, for

²⁸¹ ECtHR, *Clift v. the United Kingdom*, No. 7205/07, Judgment of 13 July 2010, §§ 77–78.

²⁸² CEDH, *Chaldayev c. Russie*, no. 33172/16, Arrêt du 28 mai 2019.

²⁸³ ECtHR, *Varnas v. Lithuania*, No. 42615/06, Judgment of 9 July 2013.

²⁸⁴ CEDH, *Gülay Çetin c. Turquie*, no. 44084/10, Arrêt du 5 mars 2013.

²⁸⁵ CEDH, *Martzakis et autres c. Grèce*, no. 20378/13, Arrêt du 9 juillet 2015.

²⁸⁶ CEDH, *X c. Turquie*, no. 24626/09, Arrêt du 9 octobre 2012.

which the national legislation envisages a criminal sanction, the civil law for compensating the victim is not an effective remedy²⁸⁷. For many violations of the rights, set forth in the Convention, the prisoners use the generally applicable legal remedies.

In the specific situation of deprivation of liberty, in its case-law the ECtHR has put a particular emphasis on the legal remedies against the poor material conditions of detention, which are in violation of Article 3 of the Convention. In its pilot judgment in the case of *Neshkov and Others v. Bulgaria*, along with the violation of Article 3, the Court also found a violation of Article 13. According to the Court, the Bulgarian judicial system did not provide for legal means for protection against the violation of the right to an effective remedy and where such means were used, they proved ineffective. Following its established case-law in a number of cases, the Court argued that the scope of the obligation under Article 13 regarding the poor material conditions, called for two types of relief: improving the living conditions of a prisoner (a preventive remedy), and ensuring a fair compensation for the sustained damages (a compensatory remedy). In order to be effective, these two remedies have to be applied in a complementary manner²⁸⁸. It is not necessary that the remedies are judicial – the effective protection before an administrative body also meets the requirements. The measures should focus on prevention and compensation of the prisoner rather than on seeking responsibility from officials for the poor conditions²⁸⁹. The procedure should be accessible to the prisoners and devoid of bureaucratic formalities, while at the same time the burden of proof imposed on the claimants should not be disproportionate. The Court concluded that, although claims under the Bulgarian *State and Municipalities Responsibility for Damage Act* (SMRDA) could eventually result in rewarding compensations, in reality these occasions are rare due to cumbersome bureaucratic procedures. As to the preventive remedy, the Court found that it was completely lacking in the Bulgarian system.

Soon after the introduction of the preventive and compensation remedies, as part of the reform of the Bulgarian legislation in 2017, in the case of *Atanasov and Apostolov v. Bulgaria* of 2017, the ECtHR accepted that the newly-adopted compensatory mechanism through which prisoners could claim compensation before the administrative court, was effective²⁹⁰. In its later case-law, however, the Court has found that in a number of cases the awarded

²⁸⁷ See 1.1. above.

²⁸⁸ ECtHR, *Neshkov and Others v. Bulgaria*, § 181.

²⁸⁹ ECtHR, *Neshkov and Others v. Bulgaria*, § 184.

²⁹⁰ ECtHR, *Atanasov and Apostolov v. Bulgaria*, Nos. 65540/16 and 22368/17, Decision of 27 July 2017.

compensations were too small and therefore the claimants still remained victims of violations of Article 3²⁹¹.

The compensatory remedy does not have to be only in the form of a financial award. The ECtHR has held that a mechanism that could lead to a reduction of the sentence or awarding a compensation, meets the requirement for an effective remedy²⁹². The Court has also held that the previous use of the preventive remedy as a pre-condition for the use of the compensatory remedy, as well as the setting of a 6-month term for its application after the poor material conditions ceased to exist, are not an obstacle to the accessibility of the compensatory remedy²⁹³.

²⁹¹ ECtHR, *Yordanov and Dzhelebov v. Bulgaria*, Nos. 31820/18 and 31826/18, Judgment of 4 June 2020; ECtHR, *Ivanov and Others v. Bulgaria*, Nos. 2727/19 et al., Judgment of 4 June 2020.

²⁹² ECtHR, *Draniceru c. République de Moldova*, no. 31975/15, Décision du 12 février 2019.

²⁹³ ECtHR, *Domján v. Hungary*, No. 5433/17, Decision of 14 November 2017.



4

RECOMMENDATIONS BY THE INTERNATIONAL BODIES REGARDING THE RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY IN CRIMINAL PROCEEDINGS IN BULGARIA

The rights of persons deprived of their liberty in criminal proceedings in Bulgaria have been a subject of monitoring and discussions on numerous occasions within the international human rights' bodies. Bulgaria is one of just a few European countries, which the CPT addressed through a public statement concerning the situation in prisons. It is not necessary to attempt to carry out a full overview of all the recommendations by the international bodies for the entire period of Bulgaria's membership in them, since a substantial part of the older recommendations have meanwhile been implemented. Therefore, here we shall focus mainly on the recommendations that were made by the human rights bodies of UN and the Council of Europe over the last 12 years.

4.1. Recommendations by UN bodies

The situation in the Bulgarian prisons has become a subject of consideration and recommendations, primarily by the Committee against Torture (CAT), which was set up by virtue of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. The CAT, along with the other UN bodies, make their concluding observations and recommendations based on periodic reviews of public governmental reports. Apart from the CAT, recommendations regarding the prison conditions in Bulgaria, have been formulated by the Human Rights Committee (HRC), created by virtue of the *International Covenant on Civil and Political Rights*, as well as by the Committee on the Elimination of Racial Discrimination (CERD), created by virtue of the *International Convention on the Elimination of All Forms of Racial Discrimination*. The topic of the situation in the Bulgarian prisons was broached during the second cycle of the Universal Periodic Review of the Human Rights Council.

The CAT's concluding recommendations on Bulgaria from 2011, regarding the places for deprivation of liberty in criminal proceedings, covered four main subjects: prison conditions, conditions in investigative detention facilities (IDFs), inter-prisoner violence and solitary confinement.

As regards prison conditions, the CAT pointed out to the obsolete material conditions, the lack of basic hygiene, overcrowding, and the serious issues with the prisoners' access to drinking water, sufficient healthy food, electricity, heating and ventilation in the cells. Furthermore, the need for psychological support and treatment of the prisoners was also stressed. The CAT recommended increased funding for the prisons, construction of new detention facilities and more frequent use of alternatives to imprisonment²⁹⁴.

Regarding the IDFs, the CAT pointed at even worse material conditions, than in the prisons: underground detention facilities were being commonly used, overcrowding that resulted in less than 1 sq. m. of living space per detainee, no windows and no possibilities for outdoor exercise. In this context, the Committee also touched upon the detention conditions in police stations and highlighted the unacceptable practice of handcuffing detainees to immovable objects for prolonged periods of time. The CAT recommended terminating the use of underground spaces for the purpose of detention on remand, building new ones and renovating existing ones, as well as providing the cells with clean mattresses and blankets, adequate heating, ventilation and lighting²⁹⁵.

For the purpose of addressing the inter-prisoner violence, the CAT recommended increasing the staff in the penitentiary institutions and strengthening the supervision. The Committee also emphasised the need for special protection of the LGBTIQ prisoners. At the same time, the CAT advised that improving the material conditions, resolving the problems with overcrowding and providing more activities to the prisoners, are also effective ways to curb violence. The Committee also expressed concerns about the high number of deaths in the Bulgarian prisons and insisted that they should be investigated promptly, thoroughly and impartially²⁹⁶.

In the 2011 recommendations the CAT placed a special emphasis on solitary confinement. The Committee expressed concerns that the Bulgarian legislation imposed overly strict regime on life-sentenced prisoners during the initial 5-year period and advised this issue to be addressed. Another recommendation to Bulgaria was to consider the recommendations made by the Special Rapporteur on torture about prohibiting the imposition of solitary confine-

²⁹⁴ CAT, *Concluding observations on Bulgaria*, CAT/C/BGR/CO/4-5, 14 December 2011, § 21.

²⁹⁵ *Ibid.*, § 22.

²⁹⁶ *Ibid.*, § 23.

ment as punishment²⁹⁷ and implementing alternative disciplinary sanctions²⁹⁸.

The innovative part of the CAT's recommendations from 2011 is the particular concern shown regarding the restrictions imposed on monitoring conducted in the places for deprivation of liberty by representatives of the civil society. The report mentioned the opportunity for monitoring granted to the Bulgarian Helsinki Committee by the national authorities, but criticised the rule that a prosecutor's permission was needed to interview pre-trial detainees. In general, the Committee recommended that the scope of monitoring was widened over all detained persons in all detention facilities²⁹⁹.

In its concluding observations from 2017, the CAT reiterated some of the recommendations from 2011, but also added a few new ones. The poor material conditions inside most detention facilities, and particularly in the prisons of Sofia, Burgas and Varna, continued to be a point of serious concern for the Committee. The CAT detailed the dilapidated state of the buildings, the overcrowding, the absence of hygiene, the lack of access to toilets at night, the insufficient access to hot water and showers, the inadequate heating and water, ventilation and bedding; the electrical cuts; the inadequate quantity and quality of food and drinking water; the insufficient activities; and the deficient health care. Considering these persisting serious issues, the Committee recommended increasing the budgets of the penitentiary facilities, building new facilities, reconstruction and modernisation of the existing ones, providing access to basic amenities like bathing and toilet facilities, adequate heating, ventilation, natural and artificial light, etc.³⁰⁰.

In the same report on Bulgaria, the CAT also reiterated its recommendations from 2011 regarding inter-prisoner violence and the need for thorough and efficient investigation of the incidents of deaths in custody, including making the results public³⁰¹. Another repeated recommendation is allowing independent monitoring bodies inside the detention facilities by the ombudsman, acting as the national preventive mechanism, as well as by the civil society organisations³⁰².

A new topic that was raised in the CAT's concluding observations from 2017, is the excessive use of force by some law enforcement officials, including in a „deliberate manner“, against prisoners³⁰³. The Committee singled out

²⁹⁷ See above 2.7.

²⁹⁸ CAT, Concluding observations on Bulgaria – 2011, § 24.

²⁹⁹ *Ibid.*, § 11.

³⁰⁰ CAT, *Concluding observations on Bulgaria*, CAT/C/BGR/CO/6, 15 December 2017, §§ 13–14.

³⁰¹ *Ibid.*, § 14.h.

³⁰² *Ibid.*, § 14.e.

³⁰³ *Ibid.*, § 11.a.

the prisons of Sofia and Burgas as facilities where these practices are quite common, although these recommendations could be applied across the whole penitentiary system. The CAT urged the state authorities to issue a public statement that impunity for acts of torture and ill-treatment would not be tolerated and that their perpetrators would be investigated and punished. Moreover, the state party was advised to provide training to police and prison officers on the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.

Another new emphasis in the concluding observations from 2017 was put on the health services in the Bulgarian prisons. A general recommendation was formulated to improve the quality of the health services provided to prisoners, as well as a number of specific recommendations like: conduct prompt medical screening upon entry into detention facilities and after transfers; recruit more qualified medical staff; appropriately maintain medical files and registers, including those used for recording injuries; facilitate referrals to outside specialist services, and put an end to the handcuffing or otherwise immobilising prisoners referred to outside medical care³⁰⁴.

The HRC broached the situation in the Bulgarian prisons in its concluding observations on Bulgaria from 2011 and 2018. As a whole, the HRC reiterated the observations and the recommendations made by the CAT. In its observations from 2011, the HRC focused on the overcrowding and the poor material conditions in the IDFs, as well as on the inadequate health services. A cause for concern was also the practices of corruption within the Bulgarian penitentiary institutions, „by which some detainees have access to privileges“³⁰⁵. The HRC also recommended the construction of new prisons, prompt investigation of corruption practices and enhancing the efforts to introduce alternatives to detention and the imprisonment.

In its concluding observations from 2018, the HRC highlighted yet again the inadequate conditions even in prisons which had recently undergone renovation, as well as the inter-prisoner violence and the lack of access to parole for the prisoners with life sentences. The Committee recommended bringing the material conditions in conformity with the SMR's standards, training prison staff how to prevent or deal with violence and reforms in the parole system³⁰⁶.

The Committee on the Elimination of Racial Discrimination (CERD) in its concluding observations from 2017 touched briefly upon the ethnic composition of the Bulgarian prison population. The Committee expressed concern that

³⁰⁴ Ibid., § 14.i.

³⁰⁵ HRC, *Concluding observations on Bulgaria*, CCPR/C/BGR/CO/3, 19 August 2011, § 18.

³⁰⁶ HRC, *Concluding observations on Bulgaria*, CCPR/C/BGR/CO/4, 15 November 2018, §§ 27–28

data on this topic was not being collected and therefore recommended that such process was initiated and statistical data was provided in the next periodic report to this UN body³⁰⁷.

Within the framework of the Universal Periodic Review, the subject of the conditions in the Bulgarian prisons was broached in the questions and the recommendations by Norway and the United Kingdom during the second cycle in 2015. The two countries suggested undertaking steps towards curbing the ill-treatment of prisoners and detainees, as well as improving the material conditions in the penitentiary institutions. Both recommendations were accepted by the Bulgarian government in its response to the report of the Working Group³⁰⁸.

4.2. Recommendations by the Council of Europe bodies

The rights of the persons deprived of their liberty in criminal proceedings in Bulgaria have been considered by a number of bodies within the Council of Europe. To the largest degree they have been scrutinised by the European Committee for the Prevention of Torture (CPT). In addition, the subject has been examined more closely by the ECtHR and the Committee of Ministers of the Council of Europe, the latter – in exercising its powers to monitor the implementation of the ECtHR judgments. In the following section we will review the recommendations of two bodies of the Council of Europe – the CPT and the Committee of Ministers.

4.2.1. Recommendations by the European Committee for the Prevention of Torture

HOOn 26 March 2015, the CPT issued a public statement on Bulgaria. By then, this was only the seventh public statement in the history of the Committee. Three of the former ones concerned Russia, two were on Turkey and one on Greece. After that public statement on Bulgaria, the CPT made two more of this kind – one on Belgium in 2017 and one on Russia in 2019. In 2021 the CPT made a second public statement on Bulgaria, which was focused on psychiatric and social care institutions.

It is quite clear that the public statements are not a common occurrence in the CPT practice. The Committee's usual procedure is to prepare reports with recommendations, following routine visits in the member states or during

³⁰⁷ CERD, *Concluding observations on Bulgaria*, CERD/C/BGR/CO/20-22, 31 May 2017, §§ 7–8.

³⁰⁸ All documents from the Universal Periodic Review on Bulgaria are available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BGIndex.aspx>.

the time of the visits. The Committee has published hundreds of reports on all member states of the Council of Europe. Therefore, the issuing of public statements is an exceptional tool, which the CPT resorts to only in situations of a systematic failure of cooperation or refusal on the part of a member state to improve the situation in the light of the Committee's recommendations, pursuant to Article 10.2 of the *European Convention for the Prevention of Torture*. Therefore, the public statement on Bulgaria was a significant landmark in Bulgaria's history of cooperation with the bodies of the Council of Europe, not only with regard to fulfilling the CPT's recommendations, but more generally in what concerns the rule of law.

The public statement of the CPT on Bulgaria was preceded by ten country visits in the period between 1995 and 2015. During the visits, the CPT delegations had visited all the Bulgarian prisons, but one, as well as many pre-trial detention centers and police stations. The public statement was predicated by a country visit in February 2015, during which the Committee's delegation visited the prisons in Sofia, Varna and Burgas, the G.M. Dimitrov pre-trial detention center in Sofia and several police stations³⁰⁹. Hence, in the public statement, in the part relating to the institutions under the jurisdiction of the Ministry of Justice, a reference was made to the situation in the aforementioned four facilities, particularly highlighting the conditions in the three prisons. In some parts of the statement a reference was made to the CPT reports on visits in 2012 and in 2014.

The public statement of the CPT on Bulgaria comprises of two parts. The first part concerns ill-treatment at the hands of the police, while the second part reviews the detention conditions in the institutions for deprivation of liberty in criminal proceedings, under the jurisdiction of the Ministry of Justice. In the second part, the CPT focused on nine problems, whose immediate tackling the Committee called for. They included specifically³¹⁰:

- **Physical ill-treatment of prisoners by prison staff**

„8. The situation as regards physical ill-treatment of prisoners by staff remains alarming in the three prisons visited in 2015. Many allegations of deliberate physical ill-treatment (usually consisting of slaps, punches, kicks and truncheon blows) were again heard at Sofia and Burgas Prisons and, at Varna Prison, the Committee's delegation was flooded with such allegations. In a number

³⁰⁹ CPT, 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 (CPT) from 13 to 20 February 2015, CPT/Inf(2015) 36, Strasbourg, 12 November 2015.

³¹⁰ CPT, *Public statement concerning Bulgaria*, CPT/Inf (2015) 17, Strasbourg, 26 March 2015. Below in the text, following each problem, is a direct quote from the corresponding part of the public statement, numbered with the respective paragraphs.

of cases, the delegation found medical evidence consistent with the allegations received.”

- **Physical ill-treatment of detainees by staff in the investigative remand facilities**

„9. At Sofia IDF, a clear deterioration was noted with a significant rise in the number of allegations of deliberate physical ill-treatment (slaps, punches and kicks) of inmates, including juveniles, by staff.”

- **Inter-prisoner violence**

„10. The findings of the CPT’s 2012 and 2014 visits show that inter-prisoner violence remains omnipresent at Sofia and Burgas Prisons; such episodes were again witnessed by the delegation during the 2015 visit. Frequent occurrences of inter-prisoner violence were also reported at Varna Prison.”

- **Corruption in the prisons**

„11. As described in the reports on the visits carried out in 2012 and 2014, and as acknowledged by the Bulgarian authorities, corruption remains endemic in the Bulgarian prison system. In the three prisons visited in the course of the 2015 visit, the delegation was again inundated with allegations of prisoners being asked to pay custodial, administrative, and/or medical staff for many services provided for by the law (e.g. transfers to prison hostels, early release, access to medical care, transfers to hospitals, procurement of goods, access to education/vocational training, work, etc.) or for being granted various privileges (such as leave and additional or open-type visits). This situation brings in its wake discrimination, violence, insecurity and, ultimately, a loss of respect for authority.”

- **Overcrowding in prisons**

„12. Overcrowding remains a very problematic issue in the Bulgarian prison system. For example, at Burgas Prison, the vast majority of inmates had less than 2 m² of living space in multioccupancy cells, with the notable exception of the remand section. The situation at Sofia Prison remained similar to that observed in the past, with most inmates having just a little more than 2 m² of living space per person.”

- **Poor material conditions**

„13. The material conditions at Sofia, Burgas, and Varna Prisons remained characterised by an ever-worsening state of dilapidation. In particular, most of the

sanitary facilities in these three prisons were totally decrepit and unhygienic, and the heating systems functioned for only a few hours per day. The majority of prisoners still did not benefit from ready access to a toilet during the night and had to resort to buckets or bottles to comply with the needs of nature. The kitchens at Burgas and Varna Prisons (and the dining hall at Varna Prison) remained filthy and unhygienic and infested with vermin, with leaking and over-flowing sewage pipes, and walls and ceilings covered in mould. Most parts of the establishments visited were unfit for human accommodation and represented a serious health risk for both inmates and staff. To sum up, in the Committee's view, the material conditions alone in the three prisons visited could be seen as amounting to inhuman and degrading treatment."

- **Lack of activities in prison**

„14. The vast majority of inmates (including almost all the remand prisoners) in the three prisons visited in the course of the 2015 visit still had no access to organised out-of-cell activities and were left in a state of idleness for up to 23 hours per day."

- **Poor quality and accessibility of health care in prisons and IDFs**

„15. Regarding health care, the accessibility and quality of the medical services in all the prisons visited (and the IDF in Sofia) were as poor as they had been in the past. Further, the quality of medical recording had even worsened. It is noteworthy in this respect that the keeping of the register on traumatic injuries had been discontinued at Sofia and Burgas Prisons shortly after the CPT's 2014 visit. The confidentiality of medical examinations and documentation was not respected. In addition, in prisons, the initial medical examination hardly ever took place within the first 24 hours after the inmates' arrival, as recommended by the Committee. Such screening is essential, particularly to prevent the spread of transmissible diseases and suicides, and for recording injuries in good time."

- **Other problems**

„16. It should be added that no progress was observed during the 2015 visit as regards other issues of concern to the CPT, such as prison staffing levels, discipline and segregation, and contact with the outside world."

The CPT reports based on their visits prior to 2015, shed more light on the problems, referred to as „other“, as well as on certain issues, not mentioned under that heading. The report on the visit from 2012, in addition to the problems discussed in detail in the public statement, focused on four other problems. One of them was fixation of prisoners in distressed mental state with

handcuffs to beds for long periods of time, without supervision by a doctor and sometimes not even by prison staff. The Committee qualified this treatment as „totally unacceptable“ and required that it were applied for the shortest possible periods and monitored by a doctor, as well as under the constant supervision by a member of the staff³¹¹.

The other problem highlighted in the report on the visit from 2012, concerned the treatment of the life-sentenced prisoners. The CPT pointed out to the poor material conditions in some of these prisoners' cells, the excessive isolation and the lack of activities provided, as well as to the lack of access to a conditional release procedure. The Committee recommended reform in the legislation that would allow the possibility for parole for the life-sentenced prisoners, as well as decreasing the time of their complete isolation, providing more out-of-cell activities and improving the conditions in their cells³¹².

The third problem highlighted in the report on the 2012 visit, was the low staffing levels. According to the CPT, that problem had a direct impact on the risk of increased inter-prisoner violence as a result of insufficient supervision, as well as on the possibility of properly organising activities and programmes for the prisoners. In this regard, the Committee recommended undertaking urgent steps to increase staffing levels³¹³.

The fourth problem stressed in the same CPT 2012 report, was the frequency of the visits to prisoners. The Committee deemed them rare and hence recommended increasing the visit entitlement for all prisoners to at least one per week³¹⁴.

The CPT report on the visit from 2014, which covered a relatively large number of prison facilities, to a great extent raised all the issues that became subject of the public statement a year later, but at the same time made some recommendations that were not included in the statement. One of them called for the gradual phasing-out of the pre-trial detention facilities and transferring the detainees accommodated there to the prison facilities with the aim of providing access to activities and better material conditions³¹⁵. Two other recommendations included closing down of the Belene Prison, due to the significant

³¹¹ CPT, 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 (CPT) from 4 to 10 May 2012, Strasbourg, 4 December 2012, § 20. Two years later the ECtHR found a violation of Article 3 in a similar case from the prison in Varna (see *Dimcho Dimov v. Bulgaria*).

³¹² *Ibid.*, §§ 32–39.

³¹³ *Ibid.*, § 52.

³¹⁴ *Ibid.*, § 60.

³¹⁵ CPT, 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 (CPT) from 24 March to 3 April 2014, Strasbourg, 29 January 2015, § 48.

investment needed for its reconstruction in accordance with the CPT recommendations, as well as relocating the Correctional Home from Boychinovtsi to a smaller purpose-built facility in a more accessible location³¹⁶. Another key recommendation in this report concerned the disciplinary sanctions against juvenile prisoners. The Committee found that the isolation of juveniles in disciplinary cells was a measure that was applied too frequently in Bulgaria, sometimes for prolonged periods of time. Therefore, the Committee recommended this disciplinary measure to be resorted to in exceptional circumstances, while the effective duration did not exceed three days at a time³¹⁷. The CPT also reiterated their previous recommendations about the treatment of life-sentenced prisoners and the shortage of staff from the report on the 2012 visit³¹⁸.

Following its public statement from 2015, the CPT made three consecutive visits to Bulgaria by the summer of 2020. Only one of the visits included places for deprivation of liberty in criminal proceedings. It covered Burgas, Varna and Sofia prisons, as well as the prison hostels in Debelt and Razdelna, and three pre-trial detention facilities. The visit was conducted two and a half years after the public statement and soon after the ECtHR pilot judgment on the case of *Neshkov and Others v. Bulgaria*. During this period the Bulgarian authorities undertook a series of legislative, organisational and financial measures to implement the CPT recommendations, as well as those required by the pilot judgment. The steps coincided with a decrease in the prison population in Bulgaria, as a result of demographic, economic and migration factors.

In its report on the 2017 visit, the CPT established improvement in the situation of prisoners' rights in a number of areas, as well as some persisting problems. The Committee received considerably fewer complaints about physical ill-treatment from prison guards in the three visited prisons. However, inter-prisoner violence was still a persisting problem in the prison of Varna and in the G.M. Dimitrov pre-trial detention facility in Sofia. An improvement in the material conditions, following reconstructions and refurbishment in several of the visited prisons, was also noted. In the Sliven pre-trial detention facility and in some parts of the Sofia Prison the situation remained unsatisfactory. Insufficient progress was made in what concerned the staff/prisoners ratio, because the number of the prisoners remained quite high, compared to the supervisory staff.

Although some progress was observed in the area of work and education, the CPT report from its 2017 visit emphasised that a small minority of the pris-

³¹⁶ Ibid., § 71.

³¹⁷ Ibid., § 112.

³¹⁸ Ibid., §§ 84–93, 106.

on population had access to either. In this regard, previous recommendations about the unsentenced prisoners still remained to be addressed. Lack of progress was also observed regarding the removal from the *Criminal Code* of the sentence of „life imprisonment without the right to parole“. In two other areas – health care and corruption, the CPT findings do not reflect visible improvements³¹⁹.

4.2.2. Recommendation=s by the Committee of Ministers of the Council of Europe

The ECtHR judgments regarding violations of the rights of persons deprived of their liberty in criminal proceedings, are being reviewed for their execution by the Committee of Ministers of the Council of Europe (CM) to ensure implementation of the individual and general measures, which stem from the judgments, in the enhanced procedure. The biggest group of cases that has been reviewed by this body is *Kehayov v. Bulgaria* (carrying its title from the first Court judgment on conditions of detention of January 2005). By March 2018 there was a total of 31 cases in this group. Among them is the pilot case of *Neshkov and Others v. Bulgaria*. The ECtHR judgments on the majority of these cases concerned violations of Article 3 of the Convention, due to the poor material conditions (overcrowding, lack of hygiene, lack of activities, limited access to outdoor exercise) that the applicants were subjected to; inadequate health care; prolonged application of isolation regimes and the lack of adequate legal remedies for protection against such violations.

Following the pilot judgment in the case of *Neshkov and Others v. Bulgaria* of January 2015 and the CPT public statement of March 2015, the Bulgarian authorities undertook a series of legislative, organisational and financial measures to implement the CPT recommendations. The CM acknowledged and commended these measures and their results. During its session in March 2018, the CM adopted a decision, which summarised the achievements and outlined the recommendations for further implementation of the judgments in this group³²⁰.

With regard to individual measures, the CM decided to terminate the monitoring of 19 of the cases from this group. On the remaining cases the CM required additional information about the particular claimants. Regarding the general measures, the CM:

³¹⁹ CPT, 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 (CPT) from 25 September to 6 October 2017, Strasbourg, 4 May 2018, §§ 62–100.

³²⁰ The decision, as well as a summary of the overview of the execution of the group of judgments on *Kehayov v. Bulgaria* are available at: [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22004-3589%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-3589%22]}).

- Welcomed the efforts, the measures undertaken and the results achieved by the authorities after the pilot judgment and the public statement and recommended ensuring the necessary political and financial support for their continuation.
- Although the ECtHR has considered that the domestic remedies, adopted in 2017, could be effective, the CM required more information about the ways they are operating. In order for a preventive remedy to be effective, the detention conditions should be improved.
- Welcomed the progress in decreasing overcrowding in prisons, however required more information about the situation in the IDFs.
- Encouraged the authorities to finalise the renovation projects aimed at improving material conditions in all detention facilities and to assess the achieved results. At the same time the CM urged the authorities to adopt and implement a national strategy and action plan for improving health care in the prisons.
- Urged the authorities to provide information on the case-law of the application, modification and court monitoring over the „special regimes“, as well as on the measures undertaken with the aim to avoid excessive isolation and its automatic application upon detainees in the pre-trial phase.

Another group of cases, which is under enhanced supervision, concerns violations of the rights of the prisoners, serving sentences of deprivation of liberty to vote in parliamentary elections. This group is headed by the case of *Kulinski and Sabev v. Bulgaria*. After the ECtHR's judgment of 2016, the implementation of the judgments in this group has been reviewed by the CM in March 2023. The CM noted with interest the steps taken by the Bulgarian authorities to clarify the constitutional framework but noted also that, in the light of the decision of the Constitutional Court of 18 October 2022, which indicated that it is not possible to interpret in a Convention-compliant manner the constitutional restriction of the right to vote at the origin of the violations of the Convention in these cases, the adoption of general measures appears to require a constitutional amendment. It also noted with regret that no steps have been taken so far to prepare such amendment³²¹. Since 2016 two more judgments of the ECtHR found violations of Article 3 of Protocol No. 1 to the Convention³²².

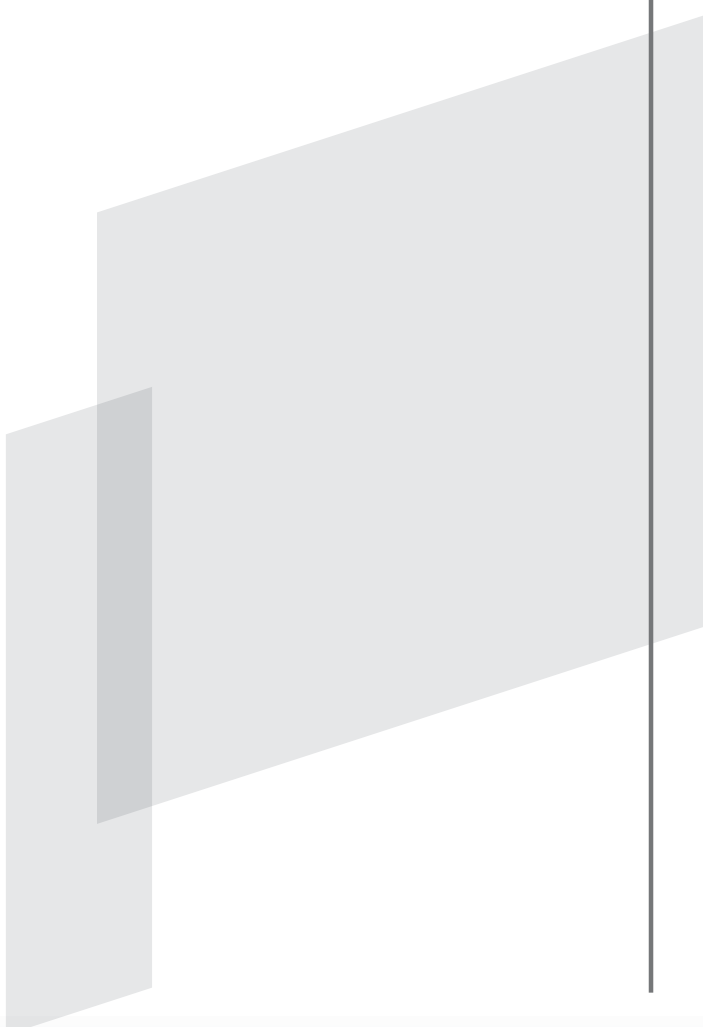
³²¹ See a summary of the overview of the execution of this group of cases at: <https://hudoc.exec.coe.int/eng?i=004-39505>.

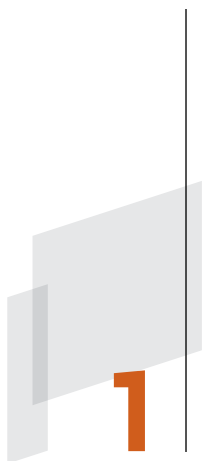
³²² ECtHR, Dimov and Others v. Bulgaria; ECtHR, Tingarov and Others v. Bulgaria.

PRAT II.

**Analysis of the changes in the places
for deprivation of liberty after the pilot
judgment of the ECtHR in the case
“Neshkov and Others v. Bulgaria”**

PRISONS





GENERAL DATA AND OVERCROWDING

Prisoners in Bulgaria are housed in 12 prisons, one of which is for women. At the end of 2021, in addition to the prisons, seven closed-type prison hostels (CTPH), 18 open-type prison hostels (OTPH) and two juvenile correctional facilities - the Juvenile Correctional Facility for Girls (JCFCG) at the Sliven Prison and the Juvenile Correctional Facility for Boys (JCFCB) at the Vratsa Prison – were in operation.

Ten of the prisons are in regional centers – Burgas, Varna, Vratsa, Lovech, Pazardzhik, Pleven, Plovdiv, Sliven, Stara Zagora and Sofia, and two are in municipal centers: Belene and Bobov Dol. Many prison hostels are located in villages or small towns. Historically, their origin can be traced to places of work: factories, workshops, and rural farms, which employed the prisoners housed in the hostels. To date, most of these workplaces have closed.

In terms of the regime for serving the sentences, there is no legal difference between prisons and prison hostels. However, observations show that conditions in the CTPHs are worse than those in prisons, due to their geographical isolation and the fact that medical, resocialization and other services are concentrated in the main prison facilities.

Each prison and the prison hostels attached to it serve a certain region of the country, and the guiding legal principle is that convicted persons should be allocated as close to their permanent address as possible. According to a new requirement, introduced in 2017, the minimum required living space of 4 square meters per prisoner should also be considered when allocating prisoners.

North-Eastern Bulgaria has the fewest prison facilities, which often forces persons from this part of the country to serve their sentences relatively far from their permanent residence. However, the situation is much worse for

women and juvenile girls and boys. There is only one penitentiary institution for imprisonment of each of these categories and it is very often located far from their usual environment and their family.

1.1. Capacity

According to official data, as of 8 June 2021, the penitentiary system in Bulgaria (prisons, prison hostels and juvenile correction facilities) has the capacity to house 8,161 prisoners³²³. This figure also includes the capacity of medical facilities that are part of places of detention, parts of buildings that are out of service (e.g., a floor of the building of the OTHP and the CTPH Vratsa) and places of accommodation in external places of work (e.g., at the Belene Prison).

TABLE 1. Prisons and prison hostels as of 8 June 2021

Prison facility	Capacity calculated based on 4 sq. m. per person
Belene Prison	336
OTPH Belene	64
External facilities part of the Belene Prison	102
Bobov Dol Prison	549
OTPH Samoranovo	179
Burgas Prison	263
CTPH Debelt	261
OTPH Debelt	82
OTPH Stroitel	61
OTPH Zhitarovo	79
Varna Prison	262
OTPH Varna	65
CTPH Razdelna	92
OTPH Razdelna	180

³²³ 1411th meeting (September 2021) (DH) – Action plan (07/07/2021) – Communication from Bulgaria concerning the case of Kehayov v. Bulgaria (Application No. 41035/98) and Neshkov and Others v. Bulgaria (Application No. 36925/10), Annex 1, see: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)698revE](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)698revE). (In English) (All referred sources in this part are in Bulgarian, except where explicitly stated)

Prison facility	Capacity calculated based on 4 sq. m. per person
Vratsa Prison	335
JCFB Vratsa	35
CTPH Vratsa (Boychinovtsi) and OTPH Vratsa (Boychinovtsi)	217
Lovech Prison	541
CTPH Atlant	217
OTPH Veliko Tarnovo	83
OTPH Poligona	110
Pazardzhik Prison	401
OTPH Pazardzhik	64
Pleven Prison	245
CTPH Vit	39
OTPH Pleven	81
Plovdiv Prison	359
OTPH Hebros	78
OTPH Smolyan	153
Sliven Prison	278
JCFG Sliven and OTPH Sliven	62
OTPH Ramanusha	38
Stara Zagora Prison	406
CTPH Cherna Gora	92
OTPH Stara Zagora	89
OTPH Vereya	54
Sofia Prison	789
CTPH Kremikovtsi	379
OTPH Kazichene	441
Total	8161

Source: Committee of Ministers of the Council of Europe

Compared to the period 2014–2015, when the capacity of the penitentiary system was 8,763, the figure for 2021 is down by 7%. The difference is probably mostly due to the recalculation of the capacity based on the 4 sq. m. requirement according to the new imperative provision of Art. 43, para 4 of the EPPDA. In the past, there was no methodology for determining the maximum number of inmates that could be accommodated in a prison facility. Capacity was determined based on the number of beds. According to our observations, when recalculating capacity based on the 4 sq. m. rule, institutions subtracted the square footage of the bathroom unit from the area of the cell, but not the area occupied by immovable objects.

In addition, in recent years, most prisons have undergone renovation and the existing large sleeping quarters for group accommodation of ten or more prisoners have been converted into smaller cells; there are separate bathroom units in the cells; sleeping rooms are reorganized into kitchens and other rooms for group activities, etc. All this leads to a reduction of accommodation capacity.

Since 2014, three open-type hostels with a total capacity of 300 inmates have been closed due to poor material conditions or management problems: OTHP Keramichna Fabrika (Prison - Vratsa), OTHP Sredna Gora (Prison - Pazardzhik) and OTHP Galabovo (Prison - Stara Zagora). After its visit to Bulgaria in 2021, the CPT recommended that the CTHP Kremikovtsi be closed due to “terrifying” conditions that contradict the prohibition of inhuman and degrading treatment³²⁴. As of the end of 2022, however, the hostel was still in operation.

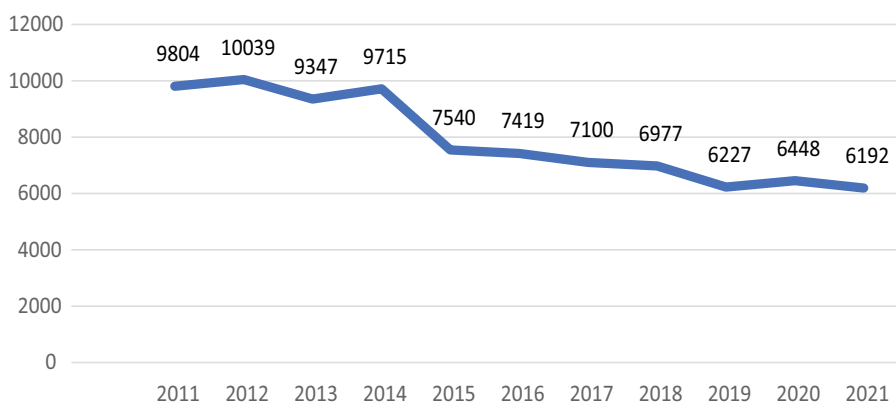
On the other hand, in recent years Bulgaria built new prison facilities, both with own funds and with the financial support of the Norwegian Financial Mechanism (NFM). These include the open-type and closed-type hostels Debel, the CTHP Razdelna, the OTHP Belene, the OTHP Vereya and a new building at the OTHP Pleven. The buildings at the former JCFB Boychinovtsi were converted into open-type and closed-type hostels and a new JCFB was opened at the Vratsa Prison. However, these new facilities have not led to an increase in the overall capacity of the penitentiary system.

³²⁴ European Committee for the Prevention of Torture, Inhuman and Degrading Treatment. Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022) 20, § 36, available at: <https://rm.coe.int/1680a88ec1>. (In English)

1.2. Number of prisoners and overcrowding

One clearly positive recent development in the prison system in Bulgaria is the reduction of the prison population. Data shows that the average number of inmates in prisons and prison hostels in 2021 was 6,192³²⁵, down by 37% from 2011 and 18% less than in 2015³²⁶.

FIGURE 1. Average number of prisoners per day in prison facilities in Bulgaria between 2011 and 2021.



Source: GDEP

Accordingly, the number of inmates in prisons as of December 31 also decreased, from 7,345 at the end of 2016³²⁷ to 5,873 at the end of 2021³²⁸.

What are the reasons for this decrease? First, there is a trend that fewer inmates enter prisons, and the number of those released annually exceeds the number of new entries.

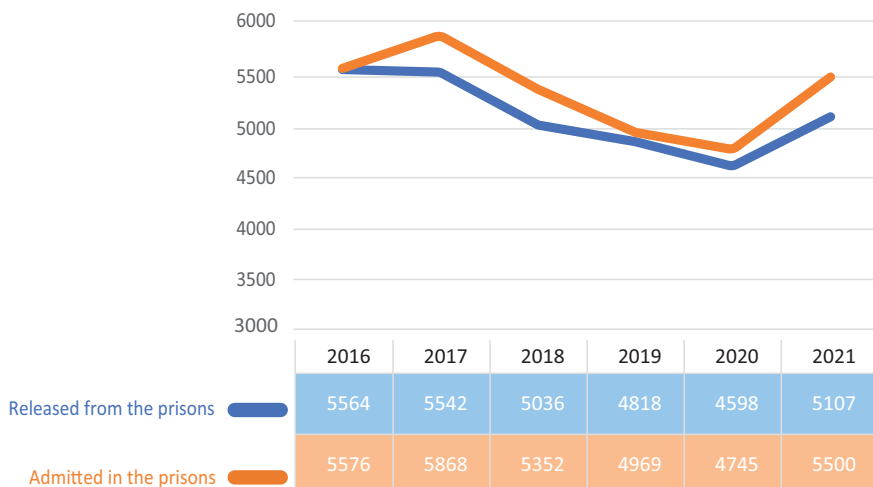
³²⁵ Information received by BHC according to an order under APIA from GDEP with №П-186/18.01.2022 г.

³²⁶ BHC, *Human Rights in Bulgaria in 2020*, Sofia: BHC, 2021, p. 88, available at: <https://www.bghelsinki.org/web/files/reports/155/files/BHC-Human-Rights-in-Bulgaria-in-2020-en.pdf>. (In English)

³²⁷ GDEP, Annual Report of the General Directorate for the Execution of Punishments at the Ministry of Justice in 2016, p. 5.

³²⁸ GDEP, Annual Report of the General Directorate for the Execution of Punishments at the Ministry of Justice in 2021, p. 7.

FIGURE 2. Number of admitted and released persons in prisons and prison dormitories between 2016–2021.



Source: GDEP. Annual reports 2016–2021

The downward trend in the number of people entering prisons is not the result of deliberate penal policies or changes in criminal legislation such as the decriminalization of certain acts or the introduction of new non-custodial sentences. There are three main reasons for the decline. First, the declining birth rate in Bulgaria has seriously affected the age cohort 18-40, which traditionally has the highest share of persons subject to criminal prosecution. Secondly, emigration has affected the same age group, further reducing its relative share of the total population. Finally, economic growth has made it possible for some poor people to earn a living without resorting to crime.

Since 2016 it has been possible to electronically monitor persons under house arrest and persons subject to certain probation measures. The use of electronic monitoring is very limited as of now and we can't say that it has had a significant impact on the number of inmates in the prisons.

If we look at the number of inmates by type of crime, the most dramatic decrease between 2016 and 2021 was among the prisoners convicted of theft. They were down by 46% (from 2409 at the end of 2016 to 1302 at the end of 2021), followed by persons sentenced for robbery, down by 38%, (from 1146 at the end of 2016 to 713 at the end of 2021)³²⁹. At the same time, how-

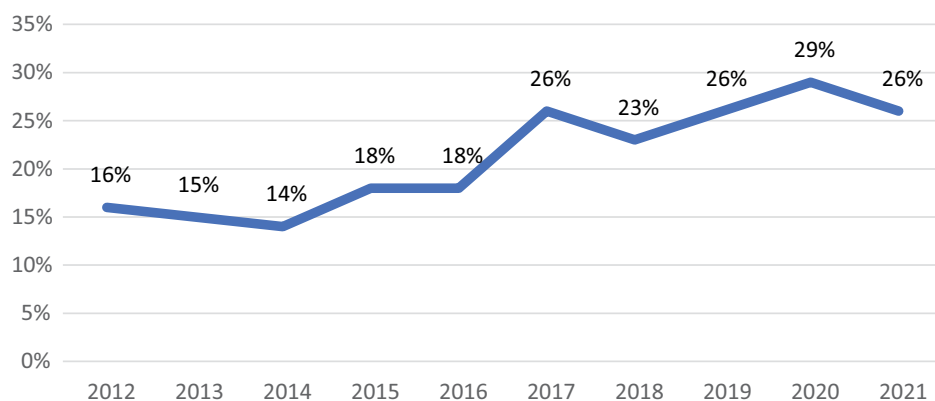
³²⁹ GDEP, Annual Report of the General Directorate for the Execution of Punishments at the Ministry of Justice in 2016, p. 6; GDEP, Annual Report of the General Directorate for the Execution of Punishments at the Ministry of Justice in 2021, p. 9.

ever, changes to the *Criminal Code* in 2015 introduced a minimum sentence of one year imprisonment for repeated convictions for drunk-driving and driving after the use of narcotics³³⁰, leading to a sharp increase in the people serving sentences for these offences. These sentences tend to be short: 3–6 months, which contributes to the dynamics of persons admitted in and released from open-type hostels.

The legislative reforms of 2017 expanded the range of persons eligible to start their sentences in open-type hostels, rather than in prisons or CTPHs. Another requirement for the transfer to OTH – having less than 5 remaining years to serve – was also dropped, which allowed prisoners with longer sentences to move to open-type hostels. These measures were taken with a view to a more balanced distribution of prisoners, since prior to 2017 closed-type prisons and prison hostels were overcrowded. The regime in open-type hostels also provides more opportunities for work, and hence - for reducing the length of the sentences of the prisoners.

At the end of 2021, the percentage of inmates housed in OTH relative to the total prison population was 26%, compared to 18% in 2016, immediately before the changes in the regulations³³¹.

FIGURE 3. Percentage of prisoners housed in open-type hostels relative to the total prison population as of January 31, 2012–2021.



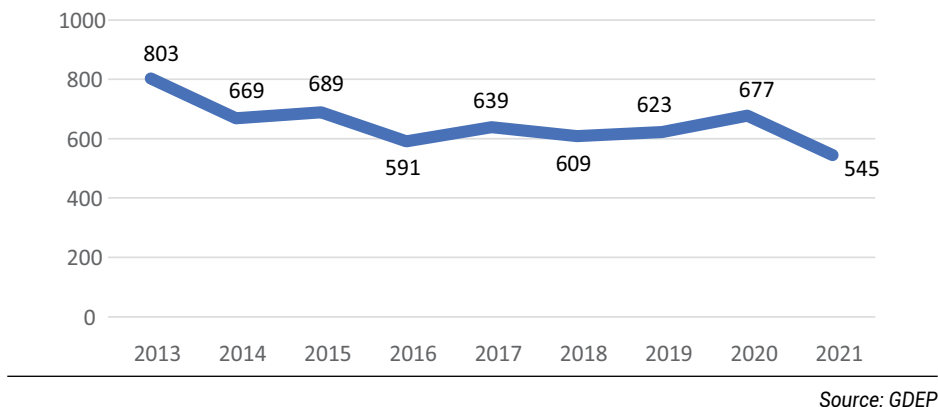
Source: BHC

³³⁰ *Criminal Code*, Art. 343, pt. 2, s. 6.

³³¹ BHC, *Human Rights in Bulgaria in 2016*, Sofia: BHC, 2017, p. 91, available at: https://bghelsinki.org/web/files/reports/34/files/BHC-Human-Rights-in-Bulgaria-in-2016-bg_issn-2367-6930.pdf.

The number of accused persons in prisons towards the end of the year also tends to decrease in the long-term.

FIGURE 4. Number of accused in prisons as of 31 December in the period 2013–2021.



Every year there are cases of unjustly detained persons in penitentiary institutions. They are mostly detained for short periods, but there are also those who “overserve” their sentences for months and even years. In 2021, there were 36 such cases for reasons such as length of pre-trial detention that wasn’t timely considered for in determining the time served, convictions and orders received too late, court-ordered sentence lower than the pre-trial detention, etc.³³².

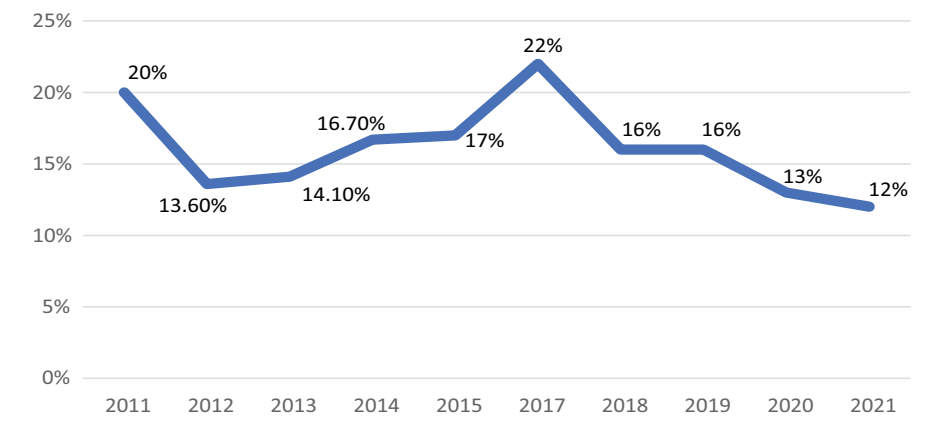
In 2017, the conditional early release procedure was changed, providing for the possibility for prisoners to petition the court themselves. Before the legislative reform, only the prison governor and the district prosecutor could petition the court with a proposal for early release. Examining the data in Figure 5, we can conclude that the change in the law did not lead to an increase in the number of early releases. On the contrary, the share of prisoners released early decreases every year with the exception of 2017. In 2021 it was the lowest in the last 10 years. Particularly in 2021, 652 prisoners benefited from early release, which constituted 12% of all released prisoners during the year³³³, while ten years earlier they were 1229, or 20% of all released prisoners during the year³³⁴.

³³² GDEP, Annual Report of the General Directorate for the Execution of Punishments at the Ministry of Justice in 2021, p. 14.

³³³ Information received by BHC according to an order under APIA from GDEP with №Л-186/18.01.2022 г.

³³⁴ Council of Europe, *Annual Penal Statistics – SPACE I – 2010*, Strasbourg, 2011, p. 109, available in at: https://wp.unil.ch/space/files/2014/04/SPACE1_2010_English.pdf. (In English)

FIGURE 5. Percentage of early releases from all released prisoners during the period 2011–2021



Source: *Penal Statistics of the Council of Europe, SPACE I, 2011–2021*

The BHC observations indicate that the prisoners who get an early release for the most part have short remaining sentences and their release is proposed or supported by the prison administration. However, it is possible that there has also been an increase in the share of early released prisoners with a longer remainder of sentences simply due to the new opportunity which allows them to petition the court on their own, while the practice among prison governors and prosecutors is to propose early release only for individuals with short remaining sentences.

Thus, the long-standing problem of overcrowding in closed facilities seems almost solved, mainly as a result of the lower average number of inmates and the relocation of prisoners from prisons and closed-type hostels to open-type hostels. We can note with interest that while at the end of 2012 all prisons and most of the CTPHs in Bulgaria were overcrowded (some, such as the Burgas Prison, were standing at two and a half times their then-established capacity³³⁵), in the summer of 2015 only half of the prisons in the country and one closed-type prison hostel were overcrowded. As of 8 June 2021, only the Plovdiv Prison and the CTPH Debelt were overcrowded³³⁶. Currently,

³³⁵ 1236 meeting (22–24 September 2015) (DH) – Action plan (06/07/2015) – Communication from Bulgaria concerning the case of Neshkov and Others and the Kehayov group of cases against Bulgaria (Applications No. 36925/10, 41035/98), Annex 2, available at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)755E](https://hudoc.exec.coe.int/eng?i=DH-DD(2015)755E). (In English)

³³⁶ 1411th meeting (September 2021) (DH) – Action plan (07/07/2021) – Communication from Bulgaria concerning the case of Kehayov v. Bulgaria (Application No. 41035/98) and Neshkov and Others v. Bulgaria (Application No. 36925/10), Annex No 1. (In English)

only certain areas in the main prison buildings and in the closed-type hostels are overcrowded.

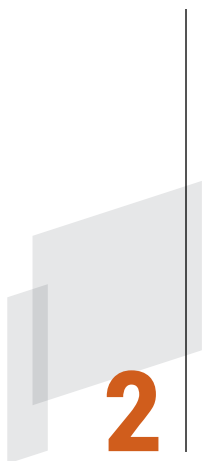
At the same time, our research and the official data reveal overcrowding in a large number of open-type prison hostels. According to official data, as of 8 June 2021, six of the 16 OTHs in the country were overcrowded: the OTH Belene, the OTH Debelt, the OTH Stroitel, the OTH Pazardzhik, the OTH Pleven, the OTH "Stara Zagora"³³⁷.

The lack of capacity in open-type hostels has a negative effect mostly on the recategorization of prisoners and their possibilities to transfer from a closed-type to an open-type hostel. Such a situation exists for example in the Pazardzhik Prison, where the number of general regime prisoners in the closed-type facility is increasing. The capacity of the prison's only open-type hostel is not sufficient to accommodate those originally assigned there by the court and those who have acquired the right to be recategorized from serving in closed-type to an open-type facility. Furthermore, the many external companies such as washes, mortuaries and feed depots are interested in hiring inmates, but the general regime prisoners housed in the prison are not allowed to leave it, unlike those who are at the open-type hostels. According to the management, it is necessary to increase the capacity of the open-type hostel or to open a new one to house the general regime inmates that are currently in the prison building.

The capacity of the OTH Pleven has been expanded with a second building due to the increase in admissions of prisoners categorized as open-type inmates. For the same reason, the Prison Hostel Razdelna had to accommodate open-type prisoners on a floor assigned for closed-type prisoners only. The CTPH Vit had to establish a new housing facility for open-type prisoners deemed to be at high risk of harm.

More and more institutions tend to comprise of both closed and open-type facilities. Such are the hostels in Boychinovtsi and Razdelna, where the two types of prison facilities are separated by a corridor. As mentioned earlier, in the Razdelna hostel, the two categories of inmates are even housed along the same corridor. This makes it practically impossible to apply a differentiated approach in terms of the correctional effect aimed at both categories of prisoners. Open-type prisoners cannot move freely in the area of the facilities, even though they are entitled to that, while those who do not work outside the facilities are in an identical situation as the prisoners serving their sentence in a closed-type prison.

³³⁷ Ibid.



MATERIAL CONDITIONS

2.1. Renovations and construction of new facilities

Over the past ten years, significant efforts have been made to improve the material conditions in prison facilities in Bulgaria, and to bring them in line with international standards for the humane treatment of prisoners. This follows decades of inaction on the part of the state, blamed on the lack of financial resources, which lead to the widespread neglect and decay of prison infrastructure. In addition, the lack of toilets and running water in the cells was a problem that required significant investment.

The main source of funding is the Norwegian Financial Mechanism (NFM). Since 2013, it has been providing funds for the construction of new prisons, as well as for the repair and reconstruction of existing prisons, for the purchase of furniture, equipment, facilities, etc.

Between 2013 and 2017, GDEP, with funds provided by the NFM, implemented the project "Improving standards in prisons and investigation detention facilities by refurbishment of infrastructure to ensure respect for human rights". The activities funded under this project include:

- Construction of the new closed and open-type prison hostels in Debelt as part of the Burgas Prison;
- Renovation of the Razdelna prison hostels at the Varna Prison;
- Major renovation of the psychiatric ward of the hospital and the kitchen facility at the Lovech Prison;
- Renovation of the Stara Zagora Prison;
- Partial renovation of the CTPH Atlant;

- Construction of a new pre-trial detention facility in Shumen;
- Renovation and reconstruction of the GDEP educational center in Pleven;
- Renovation, medical equipment and furniture for the medical center and the nursery at the Sliven Prison.

Two other large projects have been approved for financing under the NFM for the period 2020–2024. The first is “Enhancing the capacity of prison staff, building a pilot prison facility, connected to a training center and improving the rehabilitation of prisoners” with a total budget of about BGN 45 million. A key objective of the project is the construction of a new “pilot” prison with a capacity of 400 people, a staff training center and a halfway house.

The structure of the prison will consist of the following main units: an administrative wing with a main entrance; a reception and distribution wing for the initial processing of prisoners, a visiting room, the main spaces for the security staff with the central observation post; a residential wing with separate housing units for up to 60 inmates; a school, a sports field, a store, a chapel, storage facilities, staff parking places and a garage for the prison's vehicles and other spaces necessary for the functioning of the prison. The building will consist of a new residential wing, a new administrative wing, a control and distribution wing with a medical office and a security checkpoint with a waiting room for visitors. The residential wing's capacity will be for up to 400 prison places. The sleeping quarters for the prisoners will have private bathrooms, with a living area of 6 sq. m. per person and about 2 sq. m. for a bathroom. The layout of the residential wing will also include a special high security section, a section for vulnerable groups, a reception, correctional work spaces, canteens, a library and staff offices³³⁸.

The place chosen for the construction of the pilot prison is the village of Samoranovo in Dupnitsa municipality, where the open-type prison hostel at the Bobov Dol Prison is located, currently full at 2/3 of its capacity. According to the project, the new prison must take some pressure off the Sofia Prison, which probably means that prisoners from the city of Sofia and the Sofia region will be accommodated there. The idea to build the new penitentiary 70 km. from the city, where most of the prisoners will come from, is grounded mostly on in-

³³⁸ Description of the project „Enhancing the capacity of prison staff, building a pilot prison facility, connected to a training center and improving the rehabilitation of prisoners”, beneficiary of the project: GDEP, available at: <https://2020.eufunds.bg/bg/8010592/0/Project/BasicData?contractId=1BrqQ%2FjNUY3Z4C82NCJICQ%3D%3D&isHistoric=False>.

stitutional considerations, without taking into account the negative effects that the new location will have on the basic rights and rehabilitation opportunities of the inmates, including the difficulties for family and attorney visits.

Experience has shown that building prisons outside of major cities, without public transportation, without opportunities for the inmates to work, and far from community services, courts, law enforcement, and non-governmental organizations, does not benefit inmates and the execution of sentences in general. A striking example in this regard is the case of the Prison Hostel Debelt at the Burgas Prison, which was opened in 2017 in a small town. Our field monitoring found that, despite the new building, this facility has an extremely bad microclimate due to the lack of activities, work, quality medical care, and lack of regular visits. The number of disciplinary penalties imposed is three times higher than the number of awards, and reports of self-harm, inter-prisoner violence and abuse by officers are above the system average. The research team's observations fully match what was reported in the Burgas Prison 2020 annual report:

The total number of inmates in Prison Hostel Debelt 1 and Prison Hostel Debelt 2 in 2020 is about 350 people. The minimal opportunities of the prisoners to work and, therefore, to reduce their sentences lead to their desire to move to the prison facility in the city of Burgas. A large number of requests to the head of the hostel have been made to that effect. Sometimes the failure to satisfy these requests builds tension among the prisoners, which is expressed in their refusal to eat and other destructive actions. The formal reasons for their requests to move are the inability of their relatives to visit them and the fact that they are separated from their relatives and friends in prison³³⁹.

The second project, financed by the NFM in the period 2020-2024 is "Ensuring a safe and secure material environment in prisons and detention centers". With a budget of BGN 13 million, it covers the renovation and reconstruction of various existing prison facilities and accompanying buildings, including the following:

- Reconstruction of the OTHP Hebros at the Burgas Prison with a separate halfway house;
- Improvement of the material conditions in the Plovdiv Prison;
- Renovation of the OTHP Samoranovo at the Bobov Dol Prison with a separate halfway house and the construction of a pre-trial detention facility;
- Reconstruction of an the OTHP building at the Vratsa Prison;

³³⁹ Burgas Prison, Annual Report of the Burgas Prison, First category for 2020, p. 15.

- Reconstruction of a building to separate the pre-trial detention facility and the probation service in Petrich;
- Reconstruction of the OTHP Stroitel at the Burgas Prison with a separate halfway house.

Halfway house prison facilities existed in Bulgaria prior to the repealing of the old *Execution of Punishments Act* in 2009. Halfway houses could accommodate prisoners with good behavior if they had served at least six months of their sentence in prison or in CTPH and the remainder of their sentence did not exceed five years. The concept of the new halfway houses laid down in the project is different, but their status has yet to be regulated by legislation.

By establishing a halfway house, a new social integration concept will be introduced to prepare prisoners for adaptation and inclusion in society after their release. Conditions will be created for them to acquire the necessary coping skills, better support and self-care. This model will be applied to prisoners in order to continue the reintegration process during the period in which they still need supervision. This will contribute to reducing the risk of recidivism, in contrast with the cases where prisoners are released directly³⁴⁰.

At the same time, some prison facilities are undergoing major renovations with funds from the state budget. The renovations of the CTPH Cherna Gora and the Bobov Dol Prison for example, as well as the new pre-trial detention facility at the Stara Zagora Prison were done with state funds.

Renovation of the sleeping units usually includes the construction of sanitary facilities with running water to the cells and their adjacent plumbing and sewage systems, replacement of windows and flooring, painting, renovation of common areas, as well as replacement of some furniture in the cells.

The general observation of our monitoring teams is that the quality of the finishing work on these constructions and renovations is poor and that low-quality materials have been used. Much of the renovations employed inmates as general workers, but often the results are substandard, even where professional contractors were hired. We also noted that the sinks, faucets, toilets and floor tiles used for the sanitary units are for residential rather than commercial use, which leads to their rapid deterioration and subsequent need for replacement, for which, however, no funds are provided. Most newly built bathrooms are designed without ventilation systems or windows for ventilation, which leads to moisture and mold growth. The lack of ventilation also creates discomfort for the occupants from the smell that permeates the cells.

³⁴⁰ Description of the project „Ensuring a safe and secure material environment in prisons and detention centers „, beneficiary GDEP, available at: <https://2020.eufunds.bg/bg/8010592/0/Project/BasicData?contractId=oAypAmpEH6oKombBSGxL6LA%3D%3D&isHistoric=False>.

The newly opened Debelt Prison Hostel is exemplary of these problems. According to the CPT report on their visit to the hostel in 2017, a few months after it was opened, the delegation was “struck by the low quality of the materials used and the work completed, and the already visible signs of wear-and-tear.”³⁴¹.

The prison management has also noted the shoddy construction and the low quality of the materials used. At the time of the CPT visit, the roof of the library and the school was under repair, as it was constructed to be completely flat and it collected water like in a pool. This water then flowed into the rooms. There were also complaints of water leaks and mold in the cells.

Another example is the major renovation of the CTPH Cherna Gora, with a budget of over BGN 1 million, that was completed in 2019. The project, which employed prisoners as general workers, involved the renovation of prison cells and the addition of sanitary units. According to the prison management, the renovation was “grandiose”, but the quality was poor and „now the renovation has to be renovated”. Some of the problems noted during the BHC visit were water leaks and mold in the shared bathrooms.

Similar is the case with the JCFC, which was transferred in 2018 from the town of Boychinovtsi to a completely renovated building at the Vratsa Prison. On the day of the BHC visit, just three years after the renovation, the hostels were already decrepit: the paint on the walls was peeling, equipment was broken and torn out, windows were scratched, TV-sets were broken.

The renovation of the building of the Sliven Prison is better. It was completed in 2017 with a budget of about BGN 1 million, and included the complete renovation of six corridors in the prison, including 76 sleeping units with newly added sanitary facilities and new furnishing. Our visit showed that the conditions in the renovated building remained good.

A major shortcoming of all places of detention, including newly built ones, is that they do not meet the requirements of an accessible physical environment for people with disabilities.

2.2. Condition and furnishing of prison cells

As already indicated, over the past ten years the cell with the highest capacity documented in the study was in the reception ward of the Sofia Prison. In March 2021, 29 beds were installed in the cell and in October 2021 they were reduced to 25. At the maximum of its occupancy, the living space per prisoner

³⁴¹ CPT, 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 (CPT) from 25 September to 6 October 2017, CPT/Inf (2018) 15, § 72, available at: <https://rm.coe.int/16807c4b74>. (In English)

in the cell would fall below the 4 sq. m. required by law. The largest number of large cells is in the "Stopanstvo" wing of the Lovech Prison, where 11 cells have a capacity of between 11 and 16 prisoners, and in the CTPH Atlant, where 11 out of the 20 cells have a capacity of between 13 and 16 prisoners. Apart from the high security areas, single cells are an exception. The Sliven Prison has the highest number of double and triple occupancy cells. There still are cells that are overcrowded, although this is not the norm.

In most cases, the renovated flooring of cells is tiled. A self-leveling epoxy resin that was used for this purpose at the Sliven Prison received good reviews. The floor in the Lovech Prison was in the worst condition: it was either covered with pieces of torn linoleum or just bare concrete, making the cells practically impossible to clean.

The beds are made of steel and are old and in poor condition. They are modular and can be mounted on top of each other. With the decrease in overcrowding, one of the positive changes in the accommodation conditions in Bulgarian prisons is the abolition of triple-decker bunks, which were common in the past in the most overcrowded prisons such as Burgas, Pleven and Plovdiv. In many institutions there are double-decker bunks, but as the need to use the top bunk as a bed has decreased, it is primarily used for storing luggage.

All the cells have identical metal lockers and their number now almost everywhere corresponds to the accommodation capacity of the cell. This is a significant improvement. The lockers in the renovated wings have been replaced or repainted and look reasonably good. In other places, such as the Lovech Prison and certain parts of the Sofia Prison, they were in appalling condition. During one of the visits to the reception ward of the Sofia Prison, instead of lockers, the prisoners had plastic crates. Some cells do have metal wardrobes, but this is an exception. Personal belongings are primarily stored under the beds or on vacant beds.

Usually, the cells have one wooden table and a few chairs, but their number does not correspond to the number of prisoners. In the Pleven Prison, instead of tables, the sleeping units are equipped with school desks. In the Pazardzhik Prison, metal cabinets and a table are fixed to the floor.

In addition to the basic furniture provided by the prison - beds, lockers, tables and chairs - the prisoners furnish themselves at their own expense, most often with TV-sets, electric kettles, fans, kitchenware, and sometimes - stoves.

The electricity in the cells is turned off during the night, usually between 10:00 p.m. and 6:00 a.m., sometimes there are exceptions - for sport games, for example, or in the summer when it's hot and ventilation is needed. Early shutdowns are used as a form of group punishment for an offense where the

perpetrator has not been identified – for example, alcohol found in the group's common areas.

Below is a comprehensive description of some of the cells visited by the BHC in the course of research.

VRATSA PRISON

There were about 22–23 cells in each corridor. Each corridor housed one group, with one exception. All other corridors besides the special regime one had two types of cells - the so-called „common“ cells on one side and the so-called „transitional“ cells on the other. The „common“ cells are about 20 sq. m. A space of about 2-3 sq. m. is walled off for a sanitary unit. This unit is completely separated from the cell; it is built with bricks up to the ceiling and the door closes tightly. There are four beds in the cells, complying with the requirement of 4 sq. m. per prisoner at full occupancy. The „transitional“ cells are long and narrow. They are divided into two, three or four sleeping sections, each of them of about 6 sq. m. and typically with one bed. In some of the sleeping sections there were two occupied beds and, in this case, they were overcrowded, not meeting the 4 sq. m. per inmate requirement. The sleeping sections are separated not by doors, but by curtains. A small sanitary unit is built in the middle of the transitional cells and is completely isolated from the sleeping sections. In transitional cells with multiple sleeping sections, inmates from the end sections must pass through other inmates' sections to use the toilet.

All cells have windows that allow sufficient sunlight. In some of the cells the windows were obscured by curtains or other barriers by the prisoners. The reason for this is to keep the light out in the morning when the prisoners are sleeping after breakfast. Several prisoners were sleeping during the visits. The windows have plastic frames that seal well. The furnishing of the cells, however, varies among groups and among inmates. The standard furnishings of the cells are 2-4 TVs, lockers for personal belongings, a table, several chairs and beds. The beds are mostly on one level, but in several shared cells the prisoners themselves had placed some of the beds on top of each other in order to free up more space. The pre-trial detention cells are in the worst condition. They are sparsely furnished, dirty, damp, with broken toilets and damaged faucets. The occupants of the pre-trial detention cells clearly do not invest in furnishing them as they are there temporarily. They expect to be placed with the other groups after they are sentenced. At the other end of the spectrum are the excellently furnished cells of prisoners who have made them with their own money and labor. In these cells there was no moisture and mold on the walls, they were freshly painted and decorated with paintings. The floor was covered with a new colorful linoleum. The beds were painted and covered with clean linen,

which the prisoners had bought themselves or were given by their relatives. Bedside cabinets, tables and chairs were also painted. They, contained many personal belongings, good quality television sets and other appliances. There were also custom-made shelves on the wall. A large number of these cells were in the corridor of groups 9 and 10, inhabited by prisoners who work in the prison maintenance.

Some of the cells needed serious repairs. They had mold on the walls, water leaked from damaged plumbing, the linoleum on the floor was torn, and the sanitary units were broken, sometimes missing wall and floor tiles.

GROUP 8, SOFIA PRISON

Group 8 in the Sofia Prison accommodates the following groups of inmates: newly admitted accused persons, convicted prisoners, including foreign citizens, as well as convicted prisoners escorted from prisons and prison hostels. The eighth group is housed on the third floor in one of the wings in the courtyard of the main building of the prison. In the past, the building was used as a workshop and was later adapted to house prisoners. The building is old and in a visibly poor condition. The front door leads into a wide room that resembles a spacious barn with a roof, with one partially collapsed wall and crumbling plaster. This space is used as an outdoor area. The third floor is accessible through narrow stairs and there is no elevator or other equipment for people with disabilities.

During their stay in Group 8, the prisoners remain locked in their cells throughout the day and night, with the exception of the time spent outdoors - an hour and a half per day, and the time when they are taken out to shop in the prison store or to use the shared bathroom facilities. If it is necessary to call a guard during the rest of the day, the prisoner must knock on the door of the cell and yell. Unlike the other groups in the Sofia Prison, those housed in Group 8 do not have the right to stay and walk in the group corridor. Detainees from Group 8 do not have the right to visit the library, gym, religious events, classes, or other group activities in prison. Meals are served in the cells, as there are no dining areas. All cells are smoking cells; there are no designated non-smoking cells.

Cell 2A is the largest cell in the Sofia Prison of around 90 sq. m. During the BHC visit in October 2021, the capacity was 25 places, with 12 double-decker bunk beds and one single bed. At its maximum occupancy, the living area per inmate in the cell would be below the legally required minimum of 4 sq. m. The floor is

covered with tiles, which are broken in some places. The room has large windows, but metal panels have been installed outside in order to limit visibility. The artificial lighting for the entire room consists of three fluorescent lamps. The furniture in the cell is sparse. In addition to beds, it includes a table with two benches, several chairs and two or three run-down metal lockers for personal belongings. In March 2021, most prisoners used plastic crates instead of lockers. In general, personal belongings, including food, are stored around, under and on top of the beds. Cell 2A has a bathroom, which consists of an entrance with two sinks, two toilets – one with a toilet bowl and one with a squat toilet, as well as a separate space with one working and one broken shower.

Cell 1A houses prisoners who have been transferred from the CTPH Kremikovtsi. During the visit in March 2021, the cell was equipped with eight bunk beds and housed nine people. The furniture consisted of a table and benches, but there were no lockers for storing personal belongings. During the BHC visit in October 2021, we noted that the beds had been reduced to six double bunks and that ten people were living in the cell. The cell had a private toilet, the door of which did not have a lock and did not close properly. The walls of the room were dirty and had signs of being smashed. The prisoners explained that the guards smash the walls with hammers during a search for prohibited items. The floor in the cell is laid with tiles. There are four windows on one of the walls, only two of which can be opened. The entire room is illuminated by a single light located on the high ceiling.

The last hostel houses prisoners coming from the OTH "Kazichene". This cell is in the worst material and hygienic condition in the entire Group 8. During the monitoring, the cell was filled with beds - there were 16 beds in it and one table without chairs. There was almost no room to move. Seven people were living in the cell. The walls and floor were dirty, the plaster was crumbling in places; in other places, the foam that had been used to fill the space between the window frames and the walls had fallen away and there were gaping holes. The cell had a bathroom that was in a poor condition, with a tap and toilet, but no shower. The inmates complained of cockroaches and, to a lesser extent, of bedbugs.

FOURTH FLOOR, SOFIA PRISON

On the last, fourth floor of the Sofia Prison there are two corridors, one of which was completely renovated in 2020. At the time of the BHC visit in October 2021, the cells in the corridor were unoccupied. Prison authorities explained they had not yet decided which group of inmates would be housed there. The cells were painted white; the furnishing of each one consisted of a metal table and small

metal storage stool fixed to the floor. These were the only places to store belongings in the cells – there were no additional lockers or wardrobes. The beds had new mattresses. The cells had a capacity of three or four people. The cell for four people had four beds and was about 3.50 x 4.40 m. - about 15.4 sq. m., which is less than 4 sq. m. per person. The beds were old, made of metal, but were repainted gray. The cells had a toilet stool and a sink. Additionally, there was a shared bathroom with six showers. A kitchen area was planned, but it was still empty.

2.3. Lighting

Depending on the number and size of the windows, the shape of the rooms and the arrangement of the furniture, the cells have different amount of natural light. There are no statutory standards for minimum lighting levels in sleeping quarters in prisons. According to the researchers, most cells provide sufficient amount of natural daylight, except for some cells in the building of the Sofia Prison. These cells consist of two rooms with two people each, a small corridor between them, which is used as a kitchenette, and a toilet. One of the two rooms has a window measuring about 50 x 50 cm. The other room has no exterior window. Faint daylight from the window of the adjacent toilet penetrates through a glass high in the wall that separates the two spaces. Without additional light on, the room remains dark. The cells in the reception ward of the Pleven Prison are long and narrow, and the beds are located at the farthest point from the small window. During the BHC visit there, it was observed that the natural light entering the cell was very poor. A prisoner living in this cell was trying to read a book, but he said that the strain on his eyes gives him a headache and he would usually fall asleep early.

Artificial lighting in the cells is provided by one or more lamps, most often tube fluorescent lamps. Prisoners housed in larger cells complain that in the evenings the lamps don't provide enough light for reading. At the time of the visit, the Pleven Prison had an intermittent electricity supply, which meant that the lights were switched on only between 17:00 and 22:00, despite the fact that in the afternoon hours of November the cells were already dark. Lamps are not included in the list of permitted items and cannot be brought in from outside.

2.4. Toilets

A previous BHC study documenting the situation in prisons in 2008 reported that in eight of the prisons in Bulgaria, cells lacked toilets, forcing in-

mates to use buckets at night³⁴². By 2021, this serious problem is almost completely resolved. The BHC visits show that all the cells in the general prison groups in the closed-type facilities, with the exception of the CTPH Vit at the Pleven Prison, have private toilets, completely separated by walls from the rest of the sleeping space.

For the most part, toilets are built in one of the corners of the cell and measured about 1 x 1.5 m. They consist of either ceramic and steel bowl toilets or squat toilets. Running cold water was installed in the cells during the construction. However, many of the newly built toilets have neither ventilation nor windows that open, the cold-water pipes are not hidden or insulated and there is a lot of condensation. Because of this, the toilets are damp and mold appears on the walls and the ceiling. The smell from the toilet, which is carried into the sleeping quarters, is an additional drawback. Often, pipes leak as well.

In the Pleven Prison the toilets are installed in a corner of the cell, separated by two 1 x 1.5 m steel panels. They don't have ventilation. There is a window which is part of one of the windows in the cell, but it does not open. During our visit the lock on one toilet door was missing; a rope was used instead of a lock to close the door. There was no provision for hot water. Moisture was noticeable on one of the walls in the cell where pipes run. Cold water runs in the evening from 20:00 to 22:00.

In the Pazardzhik Prison the cells have private toilets, consisting of a squat toilet with a cistern, a sink and a handheld shower head. Each toilet has a 50 x 50 cm window. In most of the examined toilets in the 4th ward there were leaks from the ceilings and fallen plaster.

In the Lovech Prison, the toilets are separated from the cell with a wall up to the ceiling and are about 2 sq. m. There is no smell in the cells; there is a squat toilet and a sink. The ceilings at the time of the BHC visit had mold.

The toilets in the cells in the Stara Zagora Prison have a metal toilet bowl with a sink above it, completely separated from the cell with walls and a door. The problem is that the sinks are very small - 25 x 50 cm. An inmate complained that the sinks above the toilets are very small, have no siphon and are inadequate even for handwashing (a valid complaint).

Cells without a toilet or without a fully enclosed toilet are available in some high security areas³⁴³. There are no toilets in the cells of the open-type prison hostels at the Sliven Prison, but the doors of the cells are not locked and

³⁴² Petrov S., Bankov, G., *Prisons in Bulgaria. A research into the penitentiary system*, Sofia: BHC, 2008, p. 23, accessed at: <https://prisonreform.bg/zatvorite-v-bulgaria-izsledvane-na-sistemata-v-bulgaria-bhk-2008/>.

³⁴³ More about this in the chapter *High security area*.

prisoners can use the toilet at any time. Other open-type prison hostels have the same arrangement.

2.5. Personal hygiene and water for personal use

With the installation of sinks and running cold water in almost all cells in the Bulgarian prisons, the conditions for maintaining the personal hygiene of prisoners have significantly improved. Other components, however, e. g. the provision of hygiene materials, access to hot water and showers, remain unsatisfactory.

The soap and washing powder are purchased and provided to the prisoners on a monthly basis and paid for by the state budget³⁴⁴. The monthly allowance of prisoners consists of two toilet soaps for showering and washing, one laundry soap and 400 g. of washing powder for a male prisoner and 500 g. for a female prisoner. Working prisoners are also given 100 ml. of detergent. In line with the instructions, 10 ml. of cleaning detergent per 1 sq. m. of area are provided for cleaning the bedrooms, canteens and corridors. In some places, the detergent is poured into plastic cups and distributed to the cells, but more often it is kept by the person responsible for the hygiene of the prison group and is used to clean the common areas only. Thus, most of the interviewed prisoners use washing powder or grated soap to clean the sanitary facilities, the toilet and the floor in the cell. Prisoners who have money buy additional cleaning detergents from the prison store. In some shared bathrooms, the researchers saw canisters of chlorine solution for disinfection.

Women and girls receive 20 sanitary pads per month. The inclusion of sanitary pads in the list of consumables purchased with funds from the state budget is a positive development. At least until 2016, only sanitary paper napkins were on the list of provided items³⁴⁵.

Other supplies for maintaining hygiene, such as toothbrushes and toothpaste, shampoo, razors and toilet paper, are not paid for by the budget and are not given to the prisoners. Such supplies may be provided to inmates who do not have money and who have not received money transfers in the last six months. To get them, a prisoner must submit an application to the social work inspector, who checks the personal record of the prisoner and approves or rejects the application.

³⁴⁴ GDEP. Order №Л-1811/21.04.2020, approving Table №6 for the detergents and disinfectants afforded to prisoners per month.

³⁴⁵ Angelova, D., Stanev, K., Women in prison. A special report on the conditions of prisoners in the only prison for women in Bulgaria focusing on the right to family life, pregnancy, birth and raising children in prison, BHC, 2016, p. 31, accessed at: <https://prisonreform.bg/zhenite-v-zatvora-bhk-2016/>.

In most places there are shared showers where prisoners can shower in groups once, twice or three times a week. The condition of the shared showers varies greatly. If the prison has been renovated, the showers have been renovated as well and are in good condition. For example, the Stara Zagora Prison has a shared shower facility with 6-7 showers, 4-5 sinks, mirrors and hangers in each corridor. The showers have tiled floors, PVC windows and fluorescent lighting. The shared showers are used for washing clothes and underwear, shaving and showering. Hot water is available twice a week for a few hours and according to the inmates, the time is sufficient for their personal hygiene needs. In the OTHP Hebros, the showers are a separate building about 30 m. from the sleeping quarters. During the field monitoring, the showers appeared to be in good condition – with tiled floor and walls, a dressing room of about 6 sq. m. with hangers and a shower room of about 10 sq. m. with 6 showers and two small windows. The shared showers in the CTPH Cherna Gora, although recently renovated, have a lot of moisture and mold due to poor ventilation. In the CTPH Vit, the shared showers were in a very bad condition: the walls were peeling off, plaster was falling, and there was mold on the walls and broken tiles around the sinks. The shared showers in the group for accused and defendants at the Sofia Prison, which was equipped with 3 showers, 3 sinks and 3 toilet cubicles, also looked extremely neglected - with falling plaster, traces of leaks and chipped tiles. Generally, the shared showers are not heated. Often, they are also used to collect the trash from the cells on the floor before it is taken to containers outside the building.

In some places, e.g., the prisons in Belene, Sofia, Pazardzhik and the CTPH Kremikovtsi, showers are installed in the sanitary facilities in the cells.

The main complaints from the prisoners are about the insufficient frequency of access to showers and hot water, the limited time for showering, not enough working showers and the weak water pressure. In the Plovdiv Prison for example, the prisoners can use the shared showers twice a week for 20-30 minutes per group, which is considered by the inmates as extremely insufficient. Heating water in buckets with a portable electric water heater and bathing in the sanitary facilities in the cells is a common practice in all prisons, when the showers or hot water are not available.

An inmate said that the shared showers in the prison had not been renovated since 2013-2014, the changing room was in a poor condition and there was no maintenance anymore. Water pressure is weak. 30-40 inmates shower at the same time for about 30 minutes and they have to wait for the water to heat up. Therefore, the shower time is not enough, besides not all of the 11 showers work. When taking a shower, prisoners handwash their clothes.

In the OTH Pleven, hot water in the shared showers is available on Mondays from 08:00 to 17:00 - one hour per cell. In the CTPH Kremikovtsi, hot water is available for one hour three times a day - morning, noon and evening, but prisoners complain it is not enough for all those who want to take a shower. In the Sliven Prison there is hot water for half an hour in the morning and for another half an hour in the evening.

The women at the OTH Ramanusha take showers twice a week, according to a schedule in the shared showers. The BHC researchers were perplexed by a restriction, reported by the interviewed inmates that they could only wash their hair and shave on Saturdays.

In the Pazardzhik Prison hot water is available in the bathroom of the prison cells twice a week for one hour - on Tuesdays and Saturdays, and each inmate has 12-15 minutes twice a week for showering, washing and shaving. Working prisoners can take a shower outside the cell and are given one additional hour of hot water per week.

In several prisons, access to cold water for personal use is very difficult. In the Razdelna Prison Hostel, in recent years, and especially since the summer of 2020, there has been a problem with the provision of water. The power supply of the hostel uses its own water source, and due to the reduction of water in it, the supply is intermittent: there is no water from 12:30 to 15:00 in the afternoon and 22:00 to 05:00 at night. The water shortage is much worse in the summer due to lower level in the tank and the increased consumption due to the new separate sanitary facilities in the cells, as researchers were told. While prior to 2016 there were only 20 taps in the hostel, after the introduction of sinks and sanitary facilities in the cells, there are now 150 water supply points. For this reason, the facility is considering options for alternative supplies, but this would be expensive and it would require targeted funding. During shutdown hours prisoners are brought water tanks and they stock up themselves by filling bottles and buckets that they keep in the sleeping quarters.

The Bobov Dol Prison also has a problem with the water supply - it is weak and insufficient and there are frequent outages. Water does not reach the top floor of the prison and inmates there draw water for bathing and washing from a water tank. On the day of the BHC visit there was no water in the cells in the prison block. Prisoners were carrying 10-litre bottles of water from the basement to their cells.

The access to water in the summer is also a major problem with the living conditions in the Vratsa Prison. The prison groups inhabiting the top floor of the prison often have no access to water. A prisoner explained that in the summer months from June to September they have water only from 03:00 to 05:00 in the morning. During the designated shower days, there is hot water, but no

cold water and therefore the prisoners cannot take a shower. Intermittent water supply is an issue that causes numerous conflicts with the prison administration. The reason is the prison's outdated water supply system, as well as the fact that inmates use water in the summer to cool food and drinks.

Cold water in the Pleven Prison is available in the evenings from 20:00 to 22:00. The prison has no difficulties in providing water, and according to the management, the intermittent water supply is imposed in order to limit the water wastage during the summer, when prisoners use the cold water to cool food and drinks. The researchers visited the prison in November and the continuous water supply had not yet been restored. The lack of running water in the cells is a serious problem for all inmates, mainly due to the inability to flush the toilet during the day. Buckets of water could be seen in all visited cells and were used for washing and cleaning during the day.

2.6. Bedding and clothing

When entering the prison, prisoners are usually provided with bedding - a mattress, bed sheets and a blanket. The mattresses are old, made of cloth, stuffed with pressed rags, and in poor condition - dirty, torn and infested with bedbugs. The bed sheets are also in poor condition and the prisoners mostly use bed linen provided by their relatives. The prison provides army type blankets. Light duvets and pillows can only be bought from the prison store, but the prisoners are frustrated that their price is inflated compared to the prices outside the prison. It is not permitted for these items to be provided and handed over by relatives during a visit.

There are no uniforms in the Bulgarian prisons and prisoners wear their own clothes, which are provided by their relatives. A list of permitted items regulates the type and number of clothing and footwear prisoners are allowed to wear. Prisoners who do not have their own clothing and shoes are entitled to get them for free, paid by the state and provided by the prison, according to specific lists approved by the Minister of Justice. The current lists contain a detailed catalog of winter and summer clothing (outwear, tracksuits, trousers, T-shirts, sweaters, etc.), several types of shoes, socks, underwear and towels that the prisoners are entitled to³⁴⁶. However, these are not provided to the prisoners, because in reality the penitentiary institutions do not have them or do not have them in full. Prisons rely mostly on used clothes received as donations from religious and non-governmental organizations. The storeroom of

³⁴⁶ Copies of the tables in force by 2020 can be accessed at: <https://prisonreform.bg/zapoved-ls-04-161-tablica-1-2-mp-polagastho-se-bezplatno-obleklo-i-obuvki-na-lisihenite-ot-svoboda>.

the Pleven Prison at the time of the BHC visit, for example, had new tracksuits and sport shoes, but other items from the lists were not available. There was also a large quantity of military boots, a donation from the Swiss Army, which were distributed mainly to working prisoners. Poor prisoners interviewed in the course of the study admitted that they had only one pair of clothes and underwear each, but received no assistance from the state, only sporadic donations from outside organizations.

2.7. Laundry

Almost all prisons have washing machines and dryers, but usually only beddings are allowed to be washed in them. Prisoners wash their clothes and underwear by hand on days when running hot water is available, or they heat water and wash them in the bathroom sink of the cells.

In the Belene Prison, the rule is that clothes are washed by hand, and the washing machines are used only for bed sheets. The situation is the same in the Sliven Prison, but as a female prisoner pointed out, the clothes of sick female prisoners are also washed in the prison laundry. The Burgas Prison has a new washing machine, but only work clothes and bed linen can be washed in it, personal clothes are to be washed by hand. The Pleven Prison has a shared washing machine and dryer, which are located in the basement of the prison and can be used by the inmates twice a month according to a schedule. Prisoners are permitted to wash everything except for underwear and socks. Blankets can be washed once every three months. There is an old military truck in the prison yard that is used during the summer months as a so-called „mattress steamer" to clean the mattresses. Laundry in the Plovdiv Prison is done mainly in the cells and in the common rooms. There is a shared laundromat, but according to one inmate it does not operate due to lack of staff. During the BHC visit to the CTPH Kremikovtsi in 2021, the washing machine had been broken for 4-5 months and everything was hand-washed, including sheets and towels.

It is common practice for prisoners to hand over their clothes and bedding to relatives to be washed at home. There are also prisoners who do laundry in exchange for cigarettes, coffee or food.

Drying is done mainly in the cells, which leads to high humidity and discomfort for the inmates. Clothes drying on ropes stretched from one end of the cells to the other were a frequent sight during the BHC visits. An inmate at the OTHP Hebros shared that drying clothes in these small cells is a pain, particularly for his asthma. Only two prison facilities had places for outdoor drying: the OTHP Debelt and the CTPH Kremikovtsi, where clothes were hanged outside the shack for sick prisoners.

2.8. Heating and cooling

Heating in most prisons is provided by local heating systems. In order to save fuel, in the cold months the heating is shut on and off according to a schedule. In the Vratsa Prison for example, the heating is on for one hour in the morning and the evening and only sometimes for another hour at noon. According to an interviewed prisoner, this is insufficient for heating the cells. Interviewees from the CTPH Cherna Gora and the Lovech Prison also complained of low temperatures in the winter due to inadequate heating. On the day of the BHC visit in the Sofia Prison, it was rainy and cold, but the heating was not on. In one of the cells, the prisoners used a self-made heater, which was a brick with a heating element built into it. The prisoners were hiding the heater under the bed. They shared that bringing in and using a portable electric heater is allowed only for prisoners with medical problems. At the same time, the offices of the prison administration were heated with air conditioners.

The cells in the OTPH Ramanusha, the OTPH Stara Zagora and parts of the sleeping quarters in the CTPH Kremikovtsi are heated with solid fuel stoves - coal and wood. Inmates in the CTPH Kremikovtsi reported that each room is provided with one tin bucket of coal and three logs of wood are provided for each room, but when it is cold outside, the fuel is not enough and the rooms are very cold. To keep warm, they also burn other materials in the stoves - clothes, plastic. Two prisoners reported burning their own clothes and blankets to keep warm. An inmate from the CTPH Kremikovtsi inquired the Sofia Municipality whether the solid fuel stoves can be replaced with ecological heating devices, but was told that only the Ministry of Justice, respectively GDEP, can initiate the procedure.

There is no ventilation system in any of the prisons in Bulgaria, including the newly built ones. Cooling with air conditioners is only available in some employees' offices. On the day the researchers visited the OTPH Pazardzhik, the temperature was 37-38°C and the building was ventilated only through opening doors and windows. Prisoners had filed numerous applications to the prison governor to allow the use of electric fans, which were then purchased by their relatives. The Bobov Dol Prison has a problem with the high temperatures in the bedrooms during the summer. During the night electricity is cut off everywhere and prisoners cannot use electric fans, even if they are allowed to.

2.9. Insects and vermin

The uncontrollable invasion of bedbugs and cockroaches in places of detention is one of the longest-standing, widely spread and difficult-to-solve

problems of living conditions in the Bulgarian penitentiary system. Prisons have signed contracts for pest control with external contractors, who spray the premises according to a schedule - once every few months. However, the situation is not improving.

On the one hand, prisoners believe that the contractors do not fulfill their obligations and their efforts have no effect on the spread of cockroaches and bedbugs: they skim on the sprays they use and dilute them; they don't spray everywhere; they don't move furniture and other objects in the cells, neither do they take out luggage nor any items from the cupboards. As a result, the contractors mostly spray the floor. It is widely believed among prisoners that after spraying, more cockroaches and bedbugs appear. On the other hand, the mattresses are old, damp and full of bedbugs; prisons that have the so-called „mattress steamers" used to exterminate insects from the mattresses are very rare. An inmate at the CTPH Cherna Gora told researchers that bedbugs are a big problem and that they have spread because the prison replaced only half of the old mattresses during the renovation. Prisoners buy insecticide sprays and use them against parasites and insects. In some places they boil water and regularly pour it over all the furniture in the cell. Elsewhere, tin cans are placed under the feet of the beds in an attempt to stop bedbugs from reaching the bed mattress.

On Sunday, we take out the beds and pour hot water over them. Then we can live in peace for up to two weeks. Then we do it all over again – a constant battle with the bedbugs.

The researchers observed traces of blood from bedbugs on the walls and the sheets in most prisons.

In September 2020, a BHC team visited cell 2A in Group 8 following several reports filed by prisoners, including a report announcing a hunger strike. The reason was an infestation of bedbugs. During the visit, many of the interviewed prisoners were anxious, had visible bite marks and complained of insomnia. We were shown the places where bedbugs hide - within the bed frames, in the mattresses, in the walls and the cracks in the windows. We were shown a metal box with bedbugs collected for extermination. One prisoner stated that on his first night in the cell, he slept on the table to avoid bedbug bites. Another inmate said that by giving his clothes and bedding to his relatives to wash, he brought bedbugs into their home and now they cannot get rid of them. There was a general agreement that there are bedbugs in the other prisons around the country, but the situation in the eighth group is much more serious than everywhere else.

After BHC alerted the central prison administration, it stated that measures had been taken to disinfect, to replace the mattresses and to renovate the cell.

The situation with cockroaches in the Bulgarian prisons is just as critical. Many complaints came from the Burgas Prison. There, prisoners showed the researchers their homemade cockroach traps: boxes filled with margarine and bread that attract cockroaches. Cockroaches can also cause material damage as they enter the TVs, causing failure.

The Pleven Prison was another place where inmates complained of cockroaches and bedbugs. BHC researchers observed cockroaches both in the prison's sleeping quarters and in the kitchen. Bedbug complaints were not as numerous as in other prisons we visited. There are no complaints from the CTPH Vit near the Pleven Prison. Prisoners informed us that the quarters are sprayed twice a month – once by an external contractor and two more times by prison staff.

Inmates in the Razdelna Prison Hostel reported that the situation with bedbugs is not as bad as it is in the Varna Prison, and only rooms that are poorly maintained possibly have bedbugs.

The CPT raises the issue of bedbugs with national authorities on each of its visits to Bulgarian prisons. After its last visit in 2021, the CPT noted that “[a]ll the penitentiary establishments visited continued (to varying extents) to be infested with cockroaches and bedbugs, inmates being obliged to use old, filthy and torn mattresses, blankets and pillows that posed a risk to their health. Clearly, efforts made so far to eradicate the aforementioned vermin had not brought any real improvement. The Committee calls upon the Bulgarian authorities to take urgent steps to replace all mattresses within the prison system (including in pre-trial detention facilities) with wipeable sealed rip-proof mattresses and to thoroughly disinfect all the prisoner accommodation areas together with all the furniture and bedding.”³⁴⁷

None of the cells visited during the study were equipped with mosquito nets on the windows. There were complaints about mosquitoes in the Burgas Prison and the CTPH Troyan, in particular.

Rat infestation is also a common problem. Researchers saw a rat in the kitchen of the Sofia Prison. Inmates in the Varna Prison reported a rat invasion. In the CTPH Kremikovtsi there were accounts of rats coming out of the sewers and stealing food.

³⁴⁷ European Committee for the Prevention of Torture, Inhumane and Degrading Treatment, Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022) 20, § 44. (In English)

2.10. Outdoor time and sports

The statutory minimum amount of time per day that prisoners can spend out in the open, outside the prison building, and do physical exercise or simply walk, is one hour for adult prisoners and two hours for juvenile prisoners. As of 2021, outdoor time for adult prisoners nationwide has been extended to 1 hour and 30 minutes. Inmates in open facilities are housed in corridors that are locked only at night, and their outdoor time is unlimited during the day.

Each prison group spends its time outdoors according to a schedule. As a general rule this happens in cemented and fenced areas in the courtyard of the prison. Most of these areas are spacious and equipped for sports - benches, barbells and other equipment, but it is often very old, run-down, broken and unsafe to use. Prisoners spend their outdoor time shopping from the prison store; telephones are also available in the outdoor areas.

Complaints regarding outdoor time concern mostly the poor and deficient sports equipment, the lack of shelter from sun and rain; the fact that there is no drinking water or toilets outdoors.

In the Stara Zagora Prison, there are two outdoor areas. One is about 1000 sq. m. and features: a gym with about 12-13 modern machines in good condition that can be used by about 10 people at the same time; a library; a store; 5-6 tables and benches under a couple of large trees; a parallel bar, a horizontal bar, table tennis and a court that can be used to play basketball, volleyball and football; 4-5 urinals, which are separated by partitions 1.70 m. in height, and a fountain. The other outdoor area is connected to the first. It is about 300 sq. m. and it also has a urinal, outdoor fitness equipment and a small garden. Older inmates and life prisoners spend their outdoor time there, although they also have scheduled access to the larger area.

The Pleven Prison has three outdoor areas. Two of them are smaller, without sports equipment or a telephone. The inmates we saw there during the BHC visit were walking in a circle. The third area is next to the prison store and it has a volleyball net, a basketball hoop and other sports equipment: horizontal bars, barbells, weight benches, some old fitness equipment (mostly out of use), as well as a seating area. There is no sanitary unit.

There is no fitness equipment installed in the outdoor area of the Plovdiv Prison. The outdoor area at the CTPH Atlant is small - about 300 sq. m., very uneven and uncomfortable to walk on. It is surrounded by buildings and it does not feel like an open space. There is no fitness equipment there. The outdoor area for inmates at the open-type Debelt Prison Hostel is a small courtyard

with two tables, chairs and a place to dry laundry. There are two other outdoor areas in the main yard for the prisoners in the closed-type hostel. These are two concrete yards with exercise bars, benches and a table tennis table. There is no vegetation and at the time of the BHC visit they were extremely hot. There is no drinking water or toilets in the yards. Group 8 from the reception ward of the Sofia Prison spends its outdoor time indoors, in a space that resembles a barn. One of its walls has partially collapsed and the plaster is crumbling.

The law stipulates that every prisoner shall, where possible, be provided with facilities for sports and exercise for one hour a day, apart from the allocated outdoor time. Most prisons have gyms, however they are not accessible daily, but once or twice a week, according to a schedule. There are no indoor gyms in the Burgas Prison and the Cherna Gora Prison Postel, and in 2021 the gym in the Sliven Prison was closed. The gym in the CTPH Kremikovtsi is a privilege, accessible only to the working prisoners. There is a small gym with barbells and wight benches in the Debelt Prison Hostel, but according to some inmates, only prisoners picked by the management can use it. In many places the fitness equipment is worn out or broken. Table tennis tables are provided in most institutions. Football, volleyball and other tournaments are also organized sporadically.

The lack of financial resources for sports equipment hampers such efforts.

The lack of money to purchase soccer, volleyball and basketball balls was a serious obstacle to prisoners doing sports. The lack of rackets and balls for table tennis was also a problem. This made it necessary for the prisoners to purchase the permitted sports equipment at their own expense³⁴⁸.

Sports are well organized in the Sofia Prison. Apart from the outdoor time, every day from Monday to Friday prisoners are allowed to visit one of the three sports halls - boxing hall, gym and table tennis hall. One of the prison's social inspectors is responsible for organizing the sports events. Since 2019, the prison has had a boxing hall located in the basement of the prison block. It is equipped with boxing pears and fitness equipment donated by the Bulgarian Boxing Federation. Once a week, an external coach visits the gym. There is an annual boxing tournament, for prisoners from all over the country. The gym is spacious and well equipped. There is also a football pitch, where a tournament between the prison groups is held twice a year.

³⁴⁸ Belene Prison, Belene Prison Annual Report, II Category, for 2020, p. 44.



3

FOOD, DRINKING WATER AND PRISON STORES

3.1. Daily food ration

The food provided by the prison is of utmost importance for inmates. By law, prisoners are entitled to free food, which must be „sufficient in chemical and caloric composition“, according to tables approved by the Minister of Justice in agreement with the Minister of Health and the Minister of Finance³⁴⁹. The current tables were approved in 2007 and set out the amount of the daily ration and the foodstuffs required per prisoner for adults and juveniles (See Table 1). That amount is measured in calories, with 2622 calories per day for adult prisoners and 3108 calories for juveniles. Working prisoners are entitled to an additional amount.

The tables list the main food items - bread, pulses, meat, fish, dairy, eggs, fruit, vegetables, as well as some more unusual, but high-calorie items, such as lard and halva (type of confectionery). The daily ration of bread for an adult prisoner is 400 g. There are no minimum requirements for the daily ration in terms of nutrients - protein, fat and vitamins and minerals. This significant regulatory omission allows for an unbalanced prison diet, which is high in carbohydrates and fats and low in proteins, vitamins and minerals.

³⁴⁹ EPPDA, Art. 84, para 2, pt. 1.

TABLE 1 On the daily ration and food products authorized per one adult deprived of liberty

Nº	PRODUCT NAME	QUANTITY IN GRAMS	CALORIES
1.	Dobrudzha bread	400	1000
2.	Flour used as thickening agent	10	35
3.	Beans	30	110
4.	Rice	20	71
5.	Pastry	20	72
6.	Cheese made from cow's milk	30	90
7.	Oil	20	185
8.	Lard	10	92
9.	Sugar	30	123
10.	Meat on the bone	110	220
11.	Chicken meat	20	25
12.	Fish	30	23
13.	1 Egg	0,625	49
14.	Nougat	10	54
15.	Marmalade/Jam	10	28
16.	Potatoes	100	71
17.	Vegetables (fresh and canned)	300	90
18.	Fruit (fresh and canned)	200	108
19.	Tea	0,4	.
20.	Tomato puree	10	8
21.	Red pepper	3	9
22.	Salt	5	-
23.	Vinegar	8	-
24.	Herbs/Spices (bay leaves, allspice)	0,07	-
25.	Milk	100	61
26.	Yogurt	100	61
27.	Butter made from cow's milk	5	37
TOTAL:			2622

In addition, a substitution table has been approved, which allows the prison governor to substitute staple foodstuffs when they are not available: fresh fruit with compote, jam or marmalade, fresh fish by tinned fish, sausages, and so on. However, the replacement of some foods is not subject to any conditions: for example, margarine can be provided instead of oil and canned vegetables can be served instead of fresh ones. According to inmates' testimonies and researchers' observations, substitution of fresh fruits and vegetables for canned ones is the rule rather than the exception. The fresh vegetables served are mainly cabbage and onions, and the fresh fruits - mainly apples (due to their poor dental health, many prisoners have difficulty eating apples). Prisoners throughout the country resented the canned green beans that were often on their menus, replacing fresh vegetables. In all likelihood this is due to the way in which the food supply contract is written, giving the supplier the right to substitute fresh products (fish, fruit, vegetables) for canned ones without any restriction, and to choose exactly what fruit and vegetables to purchase, prioritizing the less-perishable produce at the expense of seasonal produce. There is only one food supplier for the entire prison system, chosen in a public tender.

In 2021 the Public Financial Inspection Agency, acting on the signal by the Ministry of Justice, audited the public procurement procedures carried out by the GDEP between 2018 and 2020³⁵⁰. The audit found that in the first public procurement for the supply of food products to prisons for a period of 48 months launched in 2018, there were five bids, one of which was chosen. The bid of the company that had been supplying food to the prisons up until that point was eliminated due to non-compliance with the minimum requirements for 36 of the food products included in the technical assignment. Although there was a clear winner, a GDEP official authorized to conclude the contract refused to do that on the grounds that there was no competition and there was a risk of concluding a contract on unfair terms. A second procedure for the same services was launched at the end of 2019, this time for a period of 60 months. There was only one bid this time: the original supplier which had been eliminated in the 2018 tender. This time, the GDEP official considered that the requirement for competition was fulfilled, there was no risk of concluding a contract on unfair terms, public interest was protected and thus the sole candidate was awarded the contract.

In 2020, the average cost of food per day in the Bulgarian prisons varied between BGN 4 (2 euro) and BGN 6 (3 euro): it was BGN 4.26 in the Vratsa Pris-

³⁵⁰ Minister of Finance, State Financial Inspection Agency, Report №ДИД2-СФ-30/19.08.2021 for a financial inspection of the General Directorate "Execution of Punishments" at the Ministry of Justice, Sofia, General Stoilev str. 21.

on and BGN 4.48 in the Bobov Dol Prison³⁵¹, in the Stara Zagora Prison it was BGN 4,62352, in the Burgas Prison it was BGN 4,75353, and in the Varna Prison - BGN 5,50354.

3.2. Menu

Meals in the prison kitchens are prepared according to a food industry recipe book, with daily meals based on a menu prepared for the week. All places of detention provide three meals a day: breakfast, lunch and dinner. During its field visits, the BHC had the opportunity to see the content of the daily menu and, in some cases, to observe the serving and eating process.

On the day of the BHC visit to the Stara Zagora Prison the breakfast consisted of margarine, olives, salami and bread. For lunch there was a tomato and cucumber salad, three pieces of sausage, ¼ bread and an apple, and the dinner menu included tarator (a cold soup of cucumbers and yogurt), beans and ¼ bread. There was meat on the menu every day for lunch and every other day for dinner, while fish was provided once a week. Twice a week there was a dessert of milk rice or biscuit cake. Dessert would usually consist of seasonal fruit - mostly apples, peaches or watermelon. Bananas are not allowed. On the day of the visit the food was already served and there were also a few portions of potatoes for vegan inmates. On the day of the BHC visit to Vratsa Prison, all prisoners, except those on a diet, were served a large piece of bread and sausage stew, which appeared to be full of fats. There was no salad or fruit. In the Pleven Prison, the menu for the day of the visit was as follows: breakfast - tea, sausage and marmalade; lunch - chicken with red tomatoes, semolina pudding; dinner - pea stew. The menu for the following day was: breakfast - tea, cheese, egg and olives, bread; lunch - chicken and sausage soup with a side dish; dinner - baked cabbage. During our visit the prisoners were doing prep work for the next day's menu - cutting potatoes and pumpkin (grown in the prison garden). The dinner for the day, a pea stew, was already cooked. In the Sliven Prison on the day of the BHC visit, inmates were preparing home-made vegetable dip and there was watermelon for dessert. An inmate with whom the BHC spoke speculated that the watermelon was included on the menu because of our visit, as it was the first time it was served.

In the kitchen block in one of the prison groups of the Sofia Prison, the BHC researchers came across large quantities of leftover margarine (80% palm

³⁵¹ Bobov Dol Prison, *Annual Report 2020*, p. 63.

³⁵² Stara Zagora Prison, *Annual Report 2020*, p. 44.

³⁵³ Burgas Prison, *Annual Report of the Burgas Prison, Category I for 2020*, p. 34.

³⁵⁴ Varna Prison, *Annual Report 2020*, p. 83.

oil and 20% water) wrapped in plastic, and jam. The prisoners explained that this was the food they received for breakfast, but due to its poor quality nobody ate it.

Prisoners who work outside the prison or are transferred outside the prison for other reasons receive dry food such as a can of spam and bread.

In some places, we found that vegetarian and vegan options were on offer, as well as a "Muslim" menu without pork. Dietary meals, prescribed by medical professionals, were also provided. For example, during the BHC visit to the Bobov Dol Prison, 65 people were eating dietary meals. In 2020, 89 prisoners were eating dietary meals in the Vratsa Prison³⁵⁵.

3.3. Prison kitchens

Food in all prisons in Bulgaria is prepared on site - in prison kitchens. Some prison hostels have their own kitchens (e.g. OTHP Kremikovtsi, CTPH Ramanusha, CTPH Debelt, CTPH Cherna Gora), while others, which are close to the prisons, get their food from the prison (e.g. OTHP Pazardzhik) or use the prison canteen (OTHP Sliven, CTPH Vit). Juvenile correctional facilities don't have their own kitchens.

Meal organization is monitored by employees who have to record their findings in a kitchen register. Other documents relating to food that are kept in the kitchen are daily lists of products supplied and used, a journal of the substituted products, a kitchen staff journal, a list of the prisoners and a journal noting extra food rations.

Kitchens in some prisons such as Lovech and Burgas have been modernized and renovated over the past seven years with funding from the NFM. The kitchen in the Stara Zagora Prison is also well equipped with many new appliances: grills for roasting meat, 8 ovens, 16 hotplates, several boiling pans and deep fryers.

Other kitchens remain in dire material condition. The kitchen of the Plevnen Prison has quite old and worn-out equipment and kitchenware. The cooking stoves, model "Pautalia 3", were very old, rusty, and the oven doors did not close well, making them probably very inefficient. Some of the tiles in the kitchen were broken or missing entirely and the floor was bare concrete, which is a surface that cannot be disinfected. There was a lot of moisture on the walls of the dishwasher room. Hygiene in the kitchen did not seem to be very good. The kitchen in the Sliven Prison was also very outdated and in need of renovation.

³⁵⁵ Vratsa Prison, *Annual Report 2020*, p. 46.

The kitchen in the Sofia Prison is located underground. At the time of the research team's visit in October 2021, the kitchen facilities were in a very poor material condition and equipment was worn-out. Hygiene was poor, cockroaches were crawling on the floor and on the bread crates; a rat ran across the kitchen and the staff noted that this was usual. In the Pazardzhik Prison, an inmate complained about the hygiene in the canteen. According to him, plaster was falling from the ceiling and onto the food. Many interviewees in the Varna Prison complained about rats in the kitchen. An interviewee informed the research team that the hygiene in the kitchen in the CTPH Kremikovtsi was very poor, there were cats walking around and dirty bread crates were used to transport food.

3.4. Kitchen staff

The kitchen staff in most places consists of one professional cook and inmate assistants. At the time of the BHC visit there were 25 inmates working in the kitchen of the Stara Zagora Prison. In the summer of 2021, the OTPH Ramanusha didn't have a professional cook. The food was prepared by a female prisoner and there were numerous complaints about the quality of the meals. The cook at the Razdelna Prison Hostel is also an inmate, but he has the necessary education for the job and there were no complaints about the food. In Plovdiv the prisoners said that the quality of the food was poor because the kitchen was staffed by prisoners who did not have the appropriate training but were on good terms with the prison management. Prisoners in some places reported that the kitchen assistants steal products for their own consumption or to sell them to other prisoners. One interviewee from the Varna Prison told us that prison workers would trade one cooked chicken for three packs of cigarettes.

3.5. Meal organization

Meals for each prison group are organized according to a schedule. Breakfast is served around 7:00, lunch - usually between 11:00 and 12:00 and dinner - between 16:00 and 17:00. There is no single approach to the organization of the meals - in some prisons food is served and eaten in a communal canteen, while in others there are separate dining rooms for each group. In some places meals are served in the cells. Irrespective of the prison, inmates in high-security areas (ones who are sentenced to life imprisonment, who are isolated under Article 248 or are in solitary confinement, etc.) eat in their cells.

In the Pleven Prison most prisoners eat in the prison canteen. It is a large and recently renovated room with about 40 steel tables (fixed to the floor) and

stools (fixed to the table on a modular basis). The room has heating and fluorescent lighting, and hygiene is reasonably good. There is only one sink and no disinfectants. Female prisoners in the Sliven Prison also eat in a common canteen. In the Stara Zagora Prison the canteen is on the ground floor and it is relatively well lit. It has about 30 tables with 4 chairs each, no tablecloths, and good hygiene. The canteen of the CTPH Atlant has been renovated: it is heated, well-lit and it looks welcoming and clean. The food in the OTHP Pazardzhik is delivered from the Pazardzhik Prison kitchen three times a day. The hostel has a large canteen with many old tables and chairs. There is also a stand where two prisoners are employed to bring and distribute the delivered food.

In other prisons, meals are served in the cells. The food is carried from the kitchen to the prisoner groups. In some groups in the Vratsa Prison, the food is brought to the corridor or to the "clubs" (common spaces for group work) and from there it is distributed to each cell. In the Burgas Prison, meals are served in designated canteens for each prison group. The canteen in Group 6, for example, is about 7 sq. m., equipped with three tables without tablecloths and wooden benches. Next to the canteen is the room for distributing the food, which is about 2.5 sq. m., with a counter for placing the dishes. In the Belene Prison, there is a separate room with tables and chairs for almost every prisoner group. The food is distributed individually to each prisoner, but they eat it in the cells. In the Vratsa Juvenile Correction Facility meals are served in several dining rooms, each of which is shared by the boys housed in 2 or 3 rooms. In the Debelt Prison Hostel the meals for each group are served and eaten in small canteens.

On the field visit to the group for foreigners in the Sofia Prison, researchers noted that each the cell had a kitchenette made of countertops placed on two or three metal cabinets. The kitchenettes had small stoves with ovens, hot-plates, kitchen dishes and utensils placed on various shelves and racks above the countertops, as well as various products: fruits, vegetables, pulses, sausages, etc. Meals were served in the cells, which had tables and chairs. During the BHC visit, a food carrier on duty pushed a trolley loaded with food for lunch along the corridor, handing plates of food to inmates in each cell. Several of the inmates refused to receive food and apparently prepared their own lunch menus. The presence of kitchenettes in all cells suggests that some prisoners prefer to cook for themselves and either don't eat prison food, or supplement their menus with their own meals.

There was a mass complaint in the Pleven Prison that the guards use physical force – slaps, blows, as punishment for taking bread from the canteen to the cells, although there is no formal ban on taking food products to the hostels. The problem for many prisoners is that the time for eating in the

canteen is limited, and they have extremely poor dental status. They cannot chew quickly and therefore they have to finish their meals in the hostels. In the Pazardzhik Prison, prisoners have been disciplined for bringing food from the canteen into their cells.

3.6. Quality of the prison food

Complaints about the food were documented in most of the prisons visited by BHC. Dissatisfaction is mainly due to the quality of the products used, the taste of the prepared meals, the lack of variety in the menu, the insufficient quantity of the meals and the lack of fresh fruit, vegetables, dairy and eggs. Nevertheless, there is a view that the quality of food has improved compared to the past. There were institutions where there were no complaints about the food such as the prison in Stara Zagora, the Razdelna Prison Hostel and the Vratsa Juvenile Correctional Facility.

An inmate from the Pazardzhik Prison told BHC that when he has the opportunity, he eats only products brought in by his visitors or purchased from the prison store. According to him, the canteen food is of poor quality and of extremely inadequate quantity. He had argued with the guards about the size of the meals, pointing out that when certain prisoners skip their meals, they could be given to other inmates of poor means who did not get visitors. Another inmate from that prison said that he ate mostly products from the prison store, which he then cooked with a portable water heater in the cell, as hot plates are not allowed. He had had a dispute about the size of the meals as well, weighing the meat in his portion on one occasion to prove that it was less than required. This led to a conflict with the staff and he stopped using the canteen regularly. A third inmate who eats in the prison canteen said that tomatoes and cucumbers hadn't been on the menu since 2016; the salad was cabbage, the fruits were only apples, and that though there was meat on the menu every day, its quality was poor. Dairy products consisted of cheese and once a week - yoghurt or ayran. There was also a third dish served for lunch once a week - soup. For dinner, the meal was usually a stew. He would buy products from the prison store when his relatives would send him money, but the prices there were twice as high as in the shops outside the prison. Another prisoner who worked in the prison kitchen had quite positive feedback about the food (both quantity and quality). He confirmed that meat was on the menu every day and that fish was served for lunch every Friday.

Pointing at his lunch portion of beans and sausage, one inmate from the Sofia Prison told researchers that „even cats wouldn't eat this meat". He complained that the portions were very small: "If I rely only on these portions, I will

starve to death". Comparing the conditions to those in Greek prisons, he told us that food there was so ample that he would regularly leave some on the plate and there was fresh milk every day. Another complaint was that the canteen didn't serve different food on holidays it and didn't introduce new products on the menu. Another interviewee from the Sofia Prison was unhappy that the fish on the menu was always canned. A third inmate had no complaints about the quality and quantity of the food, stressing that the food in the Sofia Prison was better than in other prisons.

The assessment of the food in the Plovdiv Prison ranges from "relatively good" to "disgusting". All interviewees, however, expressed the opinion that the products used in the kitchen were of very poor quality. One interviewee said that the food was average, but he had no choice and although he sometimes did not like it, he still had to eat it. Another complained about the food which in his words „could not get any worse". He was working and was entitled to a supplement meal, which was usually a matchbox-sized piece of cheese. He also said that fruit and vegetables were not provided. Prisoners who knew the food from years ago, however, stressed that it was better now, due to the many complaints to institutions and the media.

During a visit of the NPM to the Lovech Prison in February 2022, complaints were received about the taste of the food and the size of the portions. The NPM however established that the meals were cooked according to the calorie dietary norms set out by the GDEP. The inspection established that food cans were within the expiration date, but an opened can of chicken rice had foul smell and its content was not edible³⁵⁶.

Prisoners from the Pleven Prison complained about the quantity and quality of the food, the lack of quality meat and fresh vegetables and fruits and the fact that the meals most often consist of either cabbage or pulses: beans, peas, lentils. The supplemental meal for diabetics and working prisoners is similar and is either a piece of cheese, yellow cheese or salami, yoghurt, as well as bread. An interviewee from the Burgas Prison said that the fruit provided, apples and peaches, are not suitable for prisoners because most do not have the teeth to chew them.

The inmates in the CTPH Kremikovtsi also shared their dissatisfaction with the poor quality of the food and products used. According to one prisoner, the meals were too greasy and used cheaper substitutes of sunflower oil. Another prisoner pointed out that the diet in the hostel was monotonous, the food

³⁵⁶ Ombudsman of the Republic of Bulgaria, *Report of the National Preventive Mechanism on an inspection carried out in the Lovech Prison*, p. 2, available at: [https://www.ombudsman.bg/pictures/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9B%D0%BE%D0%B2%D0%B5%D1%87%202022%D0%B3_\(3\).pdf](https://www.ombudsman.bg/pictures/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9B%D0%BE%D0%B2%D0%B5%D1%87%202022%D0%B3_(3).pdf).

was of poor quality and “not edible”. According to a third interviewee, the food in the hostel had improved compared to previous periods. On a scale of one to five, he gave it a score of three. However, he pointed out that the main problem is the low quality of the products used: oil, meat and pulses. Most prisoners who have the financial means and buy food from the prison store or receive food parcels, throw away a large part of the food cooked in the prison kitchen. Other prisoners supplement their prison food with purchases from the prison store. An inmate said that he had asked to give up prison food altogether in exchange for a larger limit of money he could receive from outside: in that way he could shop more at the prison store, but he was not allowed to.

In the Bobov Dol Prison an interviewee stated that unlike in the past, now the food was cooked well and the quantity was sufficient. However, another prisoner complained that the kitchen staff would steal food for themselves and that on weekends, when there are no “bosses”, the food is worse.

There were no complaints about the food in the Razdelna Prison Hostel. The juveniles interviewed in the correctional facility at the Vratsa Prison were also satisfied with the food. Apart from the main three meals, they get two snacks between the meals, most often apples or bread with pate/vegetable spread.

3.7. Food preparation by prisoners

Amendments to the legislation in 2017 made it possible to set up places where prisoners can prepare their own food. These have already been built in some prisons, either as self-contained rooms, often in place of a cell or a group room, or as kitchenettes inside the sleeping quarters. Even before the legal changes, prisoners would prepare food and drinks in cells with portable water heaters or electric kettles: two items permitted for use in hostels. However, the possession of hotplates was not clearly regulated. In some places it was tolerated by the prison, but there was always the risk that it could be seized and the owner could be disciplined. Having the legal option and the conditions to prepare their own food is an important gain for many prisoners. It allows them to improve and diversify their menus, it gives them a certain level of autonomy and normalizes the conditions under which they serve their sentence. However, many prisoners do not have the financial means to buy products from the prison store to prepare their own food.

The equipment in the kitchens is not standardized. It usually includes a tiled kitchen worktop, a sink, one or two small ovens and hot plates. Some prisons had fridges, microwaves and toasters. In some places the appliances had been purchased by the prison, in others they were owned by the pris-

oners. None of the kitchens had a cooker hood fitted and some rooms did not have windows for ventilation, which was highlighted as a problem when cooking. On each floor with a dormitory in the Pleven Prison there was one kitchen equipped with a kitchen countertop, microwave or electric cooker, fridge and dishes. These rooms did not look good, the appliances were neglected, and one fridge was chained shut. There was a schedule for the use of the kitchen by the inmates in the group, posted on the door. However, it was unclear how the schedule was followed because for some inmates, cooking time coincided with their outdoor time or other activities. In the Stara Zagora Prison, each corridor has a common area of about 50 sq. m., with tables and several chairs, two or three hotplates and a sink, where prisoners can socialize and cook. In the Vratsa Prison, at the end of each corridor, the so-called “clubs” were equipped and converted into kitchens. These rooms are slightly larger than a dormitory cell, with several hot plates, stoves with ovens, coffee makers and lockers for storing food products. During the inspection, guards said that the appliances were for communal use and only the lockers were for private. However, it subsequently became clear during the interviews that the appliances were also personal property of some inmates and that others could only access them if they were allowed to by the owners.

A large number of prisons don't have separate kitchens for prisoners. At the time of the field study, the Sliven Prison and its hostels, the Burgas Prison, the Varna Prison, and the Debelt Prison Hostel didn't have kitchens for prisoners. This is a serious point of dissatisfaction for the prisoners. In addition, the use of hot plates is not allowed in the cells.

Until January 2022, cooking pots, pans and trays were not on the lists of permitted items, which led to the absurd situation of prisoners being allowed to use a hot plate but not pots. Cookware was included in the list with its update, effective from the beginning of 2022³⁵⁷.

In some prisons, hot plates and other cooking appliances are allowed in the cells of life prisoners with the express permission of the prison governor. The use of cooking appliances is permitted in the cells of open-type hostels as well.

During some seasons inmates use water from the bathrooms to cool drinks and food, either by putting them in buckets or under running water in the sinks. This is a forbidden practice, which creates serious conflicts with the administration and may lead to disciplinary measures. With an amendment

³⁵⁷ Ministry of Justice, Order No. JIC-04-2021/08.12.2021, approving the list of personal belongings, objects, foodstuffs that inmates in prisons, prison hostels, correctional institutions and pre-trial detention facilities may obtain, use and keep in their possession or in designated places, available at: <https://prisonreform.bg/zapoved-za-razreshenite-vesthi-predmeti-i-hrani-za-lishenite-ot-svoboda-i-zadazhanite-pod-strazha-v-zatvori-i-arestite-kum-zatvorite-2022-g/>.

to the list of permitted items effective of January 1, 2022, inmates may now purchase and keep in possession electric cooler bags. Due to their high cost, however, few inmates can afford them. Another problem with cooler bags is that the power supply is cut off at night. In some of the rooms for food in the Belene Prison there were mini-fridges locked with padlocks. It was not clear who was allowed to use them and under what conditions. The situation in the Pleven Prison was similar. In the correctional facility for boys, some dormitory canteens were equipped with refrigerators. An inmate from that facility stated that in the absence of a refrigerator, a bucket of cold water was used to cool the food.

3.8. Growing food in prisons

A good, but not very popular practice in Bulgarian prisons is the development of agriculture and animal husbandry, used to meet part of the needs of the prisoners for fresh fruit, vegetables, dairy products, eggs, and so on. In fact, there are many places where prisoners do voluntary, unpaid work in orchards and vegetable gardens owned by the State-Owned Enterprise *Penal Service Fund* (PSF) or the prisons themselves. The produce, however, does not end up on their menu, but is sold to third parties. The branch of the PSF in Burgas for example owns 7 hectares of plum and apricot orchards, and sells the produce in its own shop, as well as to companies and individuals³⁵⁸. In the Lovech branch of the PSF, greenhouse vegetables are grown and sold to individuals³⁵⁹. On the grounds of the OTHP Ramanusha, women prisoners maintain a vegetable and herb garden, owned by the prison. The women who work there explained that the consumption of vegetables by female inmates is forbidden, and violators face disciplinary sanctions. Herbs from the garden are dried and used in the kitchen of the prison and the prison hostel. In the OTHP Sliven prisoners used to grow strawberries and other fruits in the courtyard, but due to conflicts over who is allowed to eat them, that practice has been discontinued. During its visit to the Pleven Prison, the BHC saw the outdoor vegetable garden, located between the prison wing and the workshop, where prisoners were doing voluntary work for the PSF. Tomatoes, cucumbers, peppers and onions are grown in the garden. The harvested produce is owned by the PSF and is sold to private individuals, as well as in the prison store.

Livestock are bred at three branches of the PSF– at the Belene, Vratsa and Plovdiv (OTPH Smolyan) prisons. In 2021, a total of 32 inmates were do-

³⁵⁸ PSF, Annual and financial report of the Prison Service Fund for 2021, p. 38.

³⁵⁹ PSF, Annual and financial report of the Prison Service Fund for 2021, p. 39.

ing paid work, raising cows, sheep and goats. The meat and dairy products are sold to third parties or offered commercially.

3.9. Food parcels

Prisoners are entitled to one food parcel per month, which they receive during visiting hours. Additional food parcels are allowed for the New Year, Christmas and Easter holidays, as well as for the holidays of the officially registered religious communities. Foreign nationals may also receive food parcels by mail. During extended visits, home-cooked food may be brought in and consumed.

A food parcel can contain up to 5 kg of food products and up to 5 kg of fresh fruits and vegetables³⁶⁰. In recent years, there is a trend to restrict the range of foods that visitors may bring. Through amendments to the list of permitted items, articles and food products that prisoners may obtain, use and keep in their possession, certain types of food now may only be purchased from the prison store. As of 1 January 2022, only fruits, vegetables and durable meat products in their original packaging may be brought in during visits. Banning the access to food which is both cheaper and of better quality than what is available in prison stores is a cause of widespread discontent among prisoners. The formal reason for these restrictions is to prevent attempts to bring in unauthorized items, including drugs. According to some inmates interviewed, the real aim is to ensure higher revenues for prison stores and to make profits 'on the backs of the prisoners'. Inmates also complained that products are often opened or cut when inspected, which reduces their shelf life, especially given the lack of refrigerators in prisons.

3.10. Prison store

Prison stores are commercial outlets of the local branches of the PSF. There are stores in all prisons and closed-type prison hostels (except in the CTPH Vit) and in some open-type hostels (e.g. OTPH Kazichene). The open-type prison hostels without stores are usually located in the immediate vicinity of the prison and the inmates are provided with access to the stores on the prison premises two or more times per week (e.g. OTPH Belene, OTPH Pazardzhik, OTPH Pleven). In OTPH Ramanusha, which is located on the outskirts of Sliven, there is no store and inmates order what they want from the prison store without visiting it.

³⁶⁰ Rules of the Enforcement of Execution of Punishments and Pre-Trial Detention Act, Art. 82, § 5.

In the majority of cases, the stores on prison premises are located in the place prisoners spend their outdoor time (e.g. in the prisons and prison hostels in Sofia, Sliven, Pleven, Debelts, Cherna Gora), but they can also be located in other places in the prisons, for example inside the building (Bobov Dol Prison) or in the yard (Belene Prison, Kremikovtzi Prison). The store in the Vratsa Prison is a one-storey building with an area of about 100 sq. m., located in the courtyard of the prison building. Inmates in the closed-type hostels can shop from Monday to Friday, within the outdoor time allocated to them according to the schedule. In the Pleven Prison there is a second store at the entrance, which is open during visiting hours.

Prison stores sell groceries, hygiene supplies, cigarettes, phone cards, postage stamps and other items that are permitted for use in correctional facilities. Under current rules, prison and prison hostel stores have an established monopoly on many of the items they offer – sweets and semi-dry sausages, canned goods, dairy products, hygiene supplies, duvets and pillows, TV sets and many other products, which are prohibited to bring in. For this reason, inmates are particularly sensitive to the prices, quality and variety of goods offered in the prison stores.

How the prices, quality and range of goods in the prison store are set:

The PSF does not supply the prison store directly. The suppliers are selected by a public tender based on the lowest price of the offer. There are separate procurements for the different categories of products such as foodstuffs, tobacco products, hygiene materials, electrical appliances, etc. The PSF provides a list of items, which the supplier should be able to provide upon request. The list delineates the size, type of packaging, technical and other characteristics of the items, for example: 'Shampoo, hydrating, for daily use, PVC packaging, 400 ml'.

In most cases, the prices of the items depend on the contract that the PSF concluded with the supplier. Food pricing is more complex. Food products in prison stores are priced on the basis of the wholesale prices for the country as reflected in the periodic bulletins of the Ministry of Agriculture and Food's System for Agri-Market Information (SAMI), and adjusted with a discount or mark-up proposed by the bidding contractor in its price proposal. Contractors update the prices of fruit and vegetables every 15 days, and for all other foods – every 30 days, in accordance with the SAMI bulletin. The PSF charges a 7 % mark-up on the prices of all delivered products, except those whose prices are legally fixed (cigarettes, postage stamps).

All prisoners we interviewed on the subject concurred that the prices in prison stores were noticeably and unjustifiably higher than in stores outside, which was an issue of top priority. An inmate at the CTPH Kremikovtsi was outraged by the high prices of products in the prison store, claiming that they were sometimes twice as high as prices in large chain stores. During a BHC visit to the Pazardzhik Prison in the summer of 2021, an inmate complained about the inflated prices of food: tomatoes at BGN 3.40 per kg., three vacuum-packed frankfurter sausages at BGN 2.40-3.00, potatoes at BGN 1.20 per kilo, a simple laundry soap, from a bulk packaging - BGN 1.29.

The researchers compared the retail prices of some products offered in prison stores and at a chain store and found huge differences (Table 2).

TABLE 2. Prices of goods offered at the store in the Pleven Prison and in a supermarket during the week 23-30.11.2021

Product	Prison store	Supermarket
Bananas	BGN 2,87	BGN 1,79
Apples	BGN 2,67	BGN 0,99
Lemons	BGN 4,21	BGN 0,95
Tomatoes	BGN 3,17	BGN 2,49
Ground coffee, 100 gr.	BGN 2,01	BGN 1,29

The expected quality of the products is not always clearly defined in the technical specifications of the supply contracts. There is a significant gap between quality and price, for example in the case of fruit and vegetables. For those, the PSF only requires suppliers to meet the quality requirements set out in the relevant marketing standards, as laid down in Annex 1 of Commission Regulation (EC) No 543/2011 and Regulation No 16, ignoring the fact that these regulations provide for different quality classes of fruit and vegetables, ranging from best quality to third quality. This allows suppliers to stock the lowest possible quality products but sell them at the average market price for this type of fruit or vegetable. According to the researchers' observations the quality of fruits and vegetables offered in prison stores is low.

In 2021, the revenue from prison stores was BGN 10,394,810 and the earnings of the PSF were around BGN 330,000³⁶¹.

The product list included in the PSF 's procurement for the supply of food products to prison stores from the beginning of 2022 covers a large range of

³⁶¹ PSF, Annual and financial report of the Prison Service Fund for 2021, p. 59.

items: 83 types of products with sugar; 38 types of milk and dairy products; 44 types of semi-dry and dry sausages and other prepared products; 21 types of bread and pasta; 26 types of fresh fruit and vegetables; 58 types of beverages; 129 types of pulses, oils, spices, canned meat and other food products not included in the other food groups. However, not all these items are available in prison stores – far from it. Stores are restocked weekly by the shopkeeper and only the basic, most sought-after items are ordered to avoid products spoiling on the shelves. For example, the store in the Pleven Prison offers fresh fruit and vegetables only on the request of the prisoners. In 2021, the Pleven Prison store did not stock products such as potatoes, rice and flour and prisoners complained that they could not cook in the designated kitchen areas. It later emerged that the supply of these products had been stopped at the orders of the prison governor. Prisoners in the Pazardzhik Prison also noted that the supply of products such as potatoes and spaghetti had been stopped for reasons unknown to them. At the store in the Stara Zagora Prison, vegetables such as tomatoes and cucumbers are stocked only on the request of the prisoners. The store does not sell potatoes either, except for vacuum-packed blanched potatoes.

3.11. Drinking water

Drinking water in prisons is provided by the utility company serving the area. Some penitentiary institutions, such as the Belene Prison and the Razdelna Prison Hostel have their own water sources. The tap water in the cells, if such is provided, and the tap water in the shared sanitary facilities in prisons and prison hostels is generally suitable for drinking. However, this study identified at least four penitentiary institutions where there were problems with the access to drinking water for prisoners.

In the summer of 2021, water shortage due to infrastructure failures affected the town of Bobov Dol and its prison. During the BHC visit the water supply to the prison cells was suspended. Drinking water was available on the ground floor of the prison building. Non-drinking water was supplied by water tankers. There were also complaints about the quality of the water. An inmate explained that when it rains, “the water becomes disgusting, there is grass in it”. In these cases, prisoners filtered the water by putting gauze on the taps. Another interviewee noted that “the dirty water ruined many people’s gallbladders”.

In the Belene prison, inmates were widely dissatisfied with the quality of the water, which had traces of sand, sludge and other unidentified impurities. The prison facilities are on an island and they extract water from their own un-

derground source. During its visit, the BHC observed that in many of the hostels, prisoners filtered the tap water through wet towels, rags or other available materials, which they tied around the taps. Upon removing the “filters”, in some cells, researchers found them to contain fine black particles and sand. The water quality problem in the Belene Prison has existed for many years and it was identified in the CPT report from its visit to the prison in 2014. In their response to the CPT, the Bulgarian authorities stated that the water is regularly subjected to microbiological and physiochemical analysis and the results were good³⁶². In 2018, the authority responsible for waters under the Ministry of the Environment tested a sample taken directly from the water source. The results show that the groundwater quality standards correspond to the regulations. However, as early as 2014, the authorities acknowledged the existence of old asbestos-cement pipes which needed to be replaced³⁶³. There is no information that this has been done. In 2020, the prison reported that “the water infrastructure and water supply system is in a condition that requires frequent expenditures”³⁶⁴.

There are problems with water supply in the OTH Razdelna as well. The prison hostel there has its own water source. Intermittent water supply had to be introduced in 2020 because of worsened weather conditions and increased water consumption³⁶⁵.

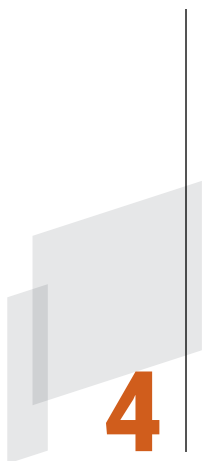
For many years the water supply to the CTPH Kremikovtsi was limited and the prisoners had access to water only a few hours a day. In 2019-2020 this problem was solved. However, researchers received numerous complaints about water quality. Inmates stated that it was not drinkable, that it had residues, oil stains, a stale smell and a swampy taste, and that once water was poured into containers, mud formed at the bottom.

³⁶² 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 24 March to 3 April 2014, CPT/Inf (2015) 13, p. 24, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000016806940c5>. (In English)

³⁶³ Ibid.

³⁶⁴ Belene Prison, *Annual Report 2020*, p. 51.

³⁶⁵ Varna Prison, *Annual Report 2020*, p. 104.



MATERIAL SITUATION OF PRISONERS

4.1. Money and personal belongings

The number of paid working prisoners is between 10% and 20%. It follows that prisoners' relatives mostly carry the burden of providing for anything that is not covered by the Ministry of Justice.

Prisoners have the right to keep a sum of money equal to one minimum monthly wage³⁶⁶ for their personal needs. Inmates in closed-type establishments and pre-trial detention facilities are prohibited by law to bring and keep money in their possession. There may be internal regulations on this matter, but they are not publicly available. When it comes to the use of cash in prisons and the CTPHs, the BHC observed the following: Prisoners may receive money from relatives by means of bank transfer to the prison's bank account or by postal order. Money received from the outside and earned from work is credited to the prisoner's personal account. In order to use it in the prison store, inmates are issued cards with a unique number and their photograph. When shopping in the prison store, the card is scanned by a card reader which is linked to software. The card reader sees the amount available in the account and registers the purchase. When they need to make a payment outside the prison, for example to pay a state fee for the initiation of a court case, prisoners submit a request to the prison administration that a money transfer be made on their behalf.

³⁶⁶ EPPDA, Art. 204, pt. 4.

Inmates in the OTPHs are allowed to have money to make purchases from the prison store, and those who work on external sites may also make purchases from shops outside the prison.

Prisoners may receive, keep in their possession and use only items and food products that are included in a special list approved by the Minister of Justice³⁶⁷. The current list at the time of writing was approved by Order № ЛС-04-746/08.12.2021 of the Minister of Justice, effective from 1 January 2022. The list is organized in four parts. The first part lists clothing, other items and food products that prisoners may keep in their dormitories. The second part includes food products that may be kept in locations specifically designated by the prison administration. The third part contains a list of items that may only be used with the permission of the prison governor. The fourth part allows additional expanded lists of authorized items, which female prisoners, juvenile inmates and those housed in the OTPHs are allowed to have.

In recent years, the list has been updated several times, adding new items such as cooking appliances and utensils, cooler bags for storing food, etc. Along with this, however, an obligation was introduced to purchase most items only from the prison store, instead of being able to receive them from relatives during visiting hours. For example, currently all types of toiletries: soap and shaving cream, shaving brush, toothbrush, deodorant, shampoo, washing powder, toilet paper, sanitary towels – may only be bought from the prison stores. The same restriction applies to duvets and pillows, TV sets, table fans and hair clippers, all types of food and drink except for durable meat products, fruit and vegetables. Authorities cite the risk of concealing of drugs, SIM cards and other unauthorized items as a reason for restricting the ability to obtain items and food from outside. Inmates see this measure as grossly unfair, as it obliges them to shop from the prison store, where goods are more expensive and of lower quality than what is available in the market outside the prison.

After the entry into force of Order № ЛС-04-746/08.12.2021 of the Minister of Justice, TV sets, antennas and set-top boxes can only be purchased from the prison store, without the option of being provided by the prisoners' relatives, as was the case before. The change has caused a wave of discontent among prisoners, for whom watching television is an integral part of daily life due to the lack of work and other meaningful activities. The dissatisfaction has to do with the fact that the TV sets that can be bought from the prison store are more expensive than those available in the major stores in the country. The order allows for the prisoners to buy older TV sets with kinescope of up to 19 inches, beside the more expensive LCD ones; in practice, however, such TV

³⁶⁷ EPPDA, Art. 122, § 1.

sets are no longer produced and cannot be procured by the store. Researchers also registered complaints about mp3 players, another item on the new list. Buying them from the prison store means that they would be empty, and there is no option to load music on them inside the prison.

4.2. Distraint

The situation is further complicated by the increasingly common practice of bailiffs to impose distraints on the personal accounts of prisoners to which their relatives transfer money. The provision of Art. 78 par. 78(3) of the EPPDA allows money to be deducted from prisoners' accounts in accordance with the laws, but not more than two thirds of their remuneration, unless the obligation is for maintenance³⁶⁸. This provision was carried over into the current legislation from the repealed *Execution of Punishments Act of 1969* and was relevant at a time when most funds available to prisoners were from wages. The prevailing case law is that funds not received as wages are fully sequestrable. The courts holds the opinion that the legislature has provided for certain income to be non-sequestrable in order to ensure that a person is able to meet his or her minimum monthly expenses for shelter, food, clothing, etc., whereas the expenses of prisoners are wholly borne by the state and, therefore, they do not need to have personal funds to meet their living expenses³⁶⁹. Debtors have the possibility to appeal against the sequestration of property, which they consider to be unseizable under Article 435(2)(2) of the *Code of Civil Procedure*. The appeal is heard by the district court of the prison location, which has jurisdiction to determine whether the property is sequestrable or non-sequestrable. In the absence of access to legal information and legal aid, the prisoners do not challenge the enforcement of sequestration and it takes effect.

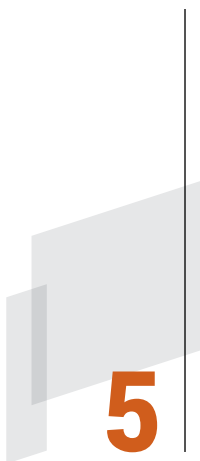
During our visits in 2021 we found the problem of frozen accounts to be widespread. Even small sums, intended for the purchase of basic hygiene supplies and other necessities that the prison does not provide - shampoo, razors, toilet paper, phone cards – may be blocked. Thus, prisoners are neither able to obtain these items during visiting hours, nor have the means to buy them from the prison store. An inmate from Stara Zagora, for example, said that his account was frozen and he couldn't buy shampoo and toothpaste, while these items were forbidden to bring in. At the same time, he did not have a job which would allow him to make use of the non-sequestrable one-third of his salary. Another prisoner from Stara Zagora sentenced to life imprisonment told us

³⁶⁸ EPPDA, Art. 78, § 3.

³⁶⁹ Judgment No. 6 of 19.01.2022 in case No. 7/2022 of the District Court - Ruse; Judgment No. 141 of 04.04.2022 in case No. 736/2021 of the Administrative Court - Stara Zagora.

that his mother would send him an average of BGN 20-30 per month to buy toiletries, but in 2021 his prison account was frozen and any funds coming in to it were redirected to the bailiff. He complained that he could not buy a razor to shave.

During our research, it became clear that in some cases prisoners receive money from their relatives through the accounts of other prisoners who have no financial support from outside. There are caps on how much money one can get from outside.



5

MEDICAL CARE

5.1. Summary

Medical care in prisons is collapsing. There are problems with all aspects of due care: superficial initial examinations, lack of prophylactic care and access to dental services, long delays in referrals to outside medical specialists and outside hospitals, poor quality of services, critical state of penitentiary hospital care. The causes are rooted in the long-standing administrative, financial, methodological and informational isolation of penitentiary healthcare from the civilian healthcare system and the resulting shortage of qualified medical staff, poor medical practices, scarce and deteriorated equipment and poor material conditions. There is no specialized medical care in prisons and access to outside medical specialists is poorly coordinated and subject to long delays. It is common practice to rely on prisoners' relatives to organize and pay for examinations, diagnostics and treatment in external medical facilities, and to buy prescribed medicines with their own money. For patients without financial resources, access to medical services that are not or are only partially paid for by the National Health Insurance Fund (NHIF) is particularly difficult or impossible. There are large numbers of people with mental health problems and addictions in pre-trial detention centers and prisons, but few of them receive the specialized care and medication they need. In 2021, the research team reported that prison physicians could not issue electronic prescriptions to chronically ill patients in prisons, noting that their isolation from the NHIF "makes it impossible to provide vital products for chronically ill patients"³⁷⁰. In 2022, other electronic medical documents began to be used - electronic re-

³⁷⁰ Ministry of Justice, *Report on the activities of the Ministry of Justice from 12.05 to 10.08.2021*, p. 10, available at: <https://portal.justice.government.bg/home/index/d8e9ca25-2cf4-46bc-8537-03b6344b5e96>.

referrals to medical specialists and referrals for tests. It is not clear at this time whether the problems with the use of electronic documents by medical professionals in prisons have been resolved.

Furthermore, Bulgaria does not respect the principle of professional independence of medical professionals from the penal enforcement authorities. The medical specialists are employed by the GDEP as staff or as contractors and are subordinated to the penitentiary management. Their affiliation with penal enforcement institutions does not ensure that medical decisions are taken solely in the interests of the health of the prisoners and are not driven by institutional considerations. One can see this reflected in the prison registers of traumatic injuries: for years there has not been a case recorded of an injury caused by the use of force or restraint by prison security staff. During our visits we received repeated testimonies of injuries inflicted by guards. Prisoners claimed they had not been taken immediately to the prison medical officer, whose task is to conduct a primary examination and register injuries. They had not been photographed, neither were they offered an official examination by an outside physician, as the law allows.

5.2. Medical centers

Medical centers are units for the primary medical care of prisoners. They provide emergency medical and dental care, primary medical care and specialized psychiatric care, as well as some other services (official medical examinations and certification of the incapacity to work)³⁷¹. Medical centers have been set up in all 11 prisons and they also serve the prison hostels.

These centers are usually located in the prison building and consist of an outpatient examination room, a manipulation room (first-aid room), a dental room, a short-stay inpatient ward with 2 to 14 beds and an isolation ward. Material conditions vary: some centers are in a very poor state, with uninviting rooms which are inaccessible to in-patients, while others, such as the infirmary at the prison in Sliven, have been completely renovated and furnished.

Between 2013 and 2014, the project „Rehabilitation of a medical center and nursery in the prison in the city of Sliven” was implemented under the Norwegian Financial Mechanism NFM-2013-BG15-1 – „Improving standards in prisons and investigative detention facilities by refurbishment of infrastructure to ensure respect for human rights”. The medical center includes 4 outpatient examination rooms, a dental office, a gynecological office, an outpatient clinic, a

³⁷¹ Ibid., Art. 9.

pharmacy, an isolator with a private bathroom, an inpatient ward with 2 hospital beds for short-term treatment, a service room with sterilization equipment, a waiting room with an air sterilizer³⁷².

Equipment in medical centers is scarce – usually there are blood pressure monitors, electrocardiographic equipment, ventilators and glucose monitors. On this issue, the CPT noted the following in its report of its visit to several prison facilities in 2021:

Both the premises and the equipment of the health-care units of the establishments visited were very poor, and in particular life-saving/emergency equipment (such as oxygen and automated external defibrillators) was systematically missing³⁷³.

Some prison institutions also have ambulances to transport prisoners to external medical facilities.

5.3. Medical staff

By law, a prison medical center may employ the following staff: a director (medical doctor), another doctor, a dentist, a psychiatrist, a paramedic and a nurse. Due to the lack of willing applicants, prisons usually hire doctors as external contractors. This means reduced working hours and the possibility to practice outside the prison as well. In 2021, there were 21 such contracts signed, with general practitioners, paramedics, dentists and nurses. That same year, another 15 general practitioners were selected pursuant to the national framework contracts for medical and dental care³⁷⁴.

The medical center in the Sliven Prison was the best staffed among those we encountered during the visits. The medical services there were provided by four full-time medical specialists: the director of the medical center, two paramedics and a dentist. A gynecologist was hired as a part-time employee. A psychiatrist working as a contractor visited the institution once a week. On the other hand, there was a serious shortage of medical staff in the Varna Prison, where only one doctor was employed. Medical services under the NHIF

³⁷² Information available at: <https://justice.government.bg/home/index/80675c1e-67d5-49e4-9157-40e283ff9e74>.

³⁷³ European Committee for the Prevention of Torture, Inhumane and Degrading Treatment, Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022) 20, § 53. (In English)

³⁷⁴ GDEP, Annual Report 2021, p. 55.

were provided by an appointed general practitioner. The medical services in the Bobov Dol Prison were provided by a staff nurse, a paramedic working as a contractor who visited the prison three days a week for eight hours a day, and a general practitioner who was appointed by the Doctors' Union and visited the prison twice a week for two hours.

The law entrusts the directors of medical centers with a great responsibilities: to organize and manage the overall medical care of the prisoners in the institution; to make proposals for treatment in external medical institutions; for licenses to leave on health grounds; to organize and supervise the supply of medicines, as well as to organize, coordinate and supervise all sanitary, hygienic and anti-epidemic activities. However, in the vast majority of institutions this position remains permanently vacant, which naturally has an impact on the organization and quality of services.

Prisoners obtain healthcare insurance from the moment of detention, regardless of their previous status. According to the National Framework Contract for Medical Activities between the National Health Insurance Fund and the Bulgarian Medical Association for 2020-2022, the director of the regional health insurance fund and the chairpersons of the respective regional committees of the Bulgarian Medical Association, in coordination with the governor of the prison institution, select a general practitioner for the prisoners on their behalf³⁷⁵. The GP is available to prisoners usually only a few hours per week, which is considered insufficient. For example, the general practitioner in the Burgas Prison is available only on Tuesdays and Thursdays from 8:00 to 10:00 in the morning and the one in the Bobov Dol Prison – on Tuesdays and Thursdays from 10:00 to 12:00. Doctors can only see patients on the premises of the prison, thus inmates from hostels are also escorted on the examination days. The GPs' main responsibility is to provide the services every insured person should receive: referrals for consultation with outside medical specialists and hospitalization. It takes up to one month for inmates to be added to the GP's patient list. During this period, they are not referred to specialists, nor do they receive other services as insured persons.

Doctors who are employed at the places of detention may also issue referrals for outside care and screenings. They may prescribe medical products financed by the NHIF. However, paramedics and nurses may not³⁷⁶.

A significant number of prison hostels in Bulgaria, including the CTPH Cherna Gora, the Razdelna Prison Hostel, the OTHP Samoranovo, and the OTHP

³⁷⁵ National Framework Contract No. ПД-НС-01-4 of 23 December 2019 for the medical activities between the National Health Insurance Fund and the Bulgarian Medical Association for 2020 - 2022, Art. 1, § 1, pt 1

³⁷⁶ Ibid, Art. 45, § 1, pt. 2 and Art. 144, § 11.

Ramanusha, do not have permanent medical centers or staff trained in first aid. They are usually visited once a week by medical staff member from the respective prison, but sometimes there are no visits because the staff member is absent, overworked or for other reasons. On certain days, prisoners may be escorted to the medical center of the prison and in case of urgency, an ambulance may be called. Even if medical personnel are present in the prison hostel, it is usually a nurse and/or a paramedic rather than a doctor. During its visit in 2017, the CPT assessed the situation in the health-care service of Debelt Prison Hostel as one of the worst: "Debelt Prison Hostel had de facto no doctor, which meant that the health-care service was run by a feldsher and a nurse; further, access to a dentist appeared to be problematic (inmates had to be taken to the Burgas Prison)"³⁷⁷.

The legislation allows inmates in open-type hostels to receive medical care in medical facilities outside places of detention, including receiving unguarded inpatient treatment. The research team's impression is that that prisons do not make use of this option, although it could significantly relieve the guards and ensure faster access to medical professionals and treatment for patients.

All medical centers are staffed by prisoner orderlies. Formally, their work duties are related to maintaining hygiene, but there is ample evidence that in practice they are involved in a number of medical activities, such as completing medical records, attending prisoners' examinations, distributing medicines, dressing wounds and others, in a clear breach of international standards and national legislation. During a BHC visit to one of the prisons, the researchers talked to an inmate who had self-harmed two days before. He had in fact been taken out of the hospital room of the prison's medical center for the interview. The interviewee reported that he had not seen a health professional since the incident. His wound had been flushed and dressed by the orderly, who was also a prisoner and did not have the necessary skills to perform this type of work. After continuing to bleed profusely, he had to be taken by ambulance to the city, where he had 4 stitches done.

In conversation with the project team in 2021, the governor of the Plovdiv Prison said that medical care was a serious problem due to the lack of doctors willing to work in the prison, especially after the retirement of the previous medical staff who had worked under different conditions: they were employees of the Ministry of Interior and had far more favorable conditions for pay and

³⁷⁷ European Committee for the Prevention of Torture, Inhumane and Degrading Treatment, Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 6 October 2017, CPT/Inf (2018) 15, § 89, available at: <https://rm.coe.int/16807c4b74>. (In English)

retirement. With a lot of personal effort, the prison governor had managed to get a doctor appointed by the regional HIF. However, in 2022 we learned from a NPM report that now there was only one dentist on staff at the Plovdiv prison. The general practitioner appointed earlier by the Regional Health Insurance Fund had been dismissed due to proven violations³⁷⁸. The dentist however was unable to fully perform the duties of a GP (to issue referrals for specialized checks and hospitalization) „due to technical obstacles and, according to the NPM team, mainly due to disinterest on the part of all those responsible in the prison system". The other doctor at the Plovdiv Prison medical center was a prisoner who assisted in the medical services on the orders of the prison governor and in the presence of prison staff³⁷⁹.

Here is a quote from the Pleven Prison Annual Report for the first half of 2021:

Solving the healthcare problem is beyond the competence of the prison administration, as it is a matter of filling vacant posts for all "doctor" and "paramedic" positions in the Medical Centre. The medical care of prisoners and detainees is provided under contract with the Health Insurance Fund. The medical personnel responsible for the care of inmates in the prison of Pleven visit the prison two days a week, on Wednesdays and Thursdays. The prison is also visited daily by a paramedic, but he is not a staff member of the prison either.

In view of the above, there is a permanent danger of an escalation of tensions within the prison community in relation to the provision of medical care and guaranteeing the health status of prisoners and detainees³⁸⁰.

Later that year, during the research team's visit to the Pleven Prison, a second general practitioner worked there as a contractor for a few hours a week.

The problems with the lack of medical staff are highlighted also in the Annual Report of the Varna Prison for 2020:

A significant problem over the period was the lack of medical staff to attend to inmates in the prison and its subdivisions. For short periods of time, there were doctors working as external contractors or appointed by the Health Insurance Fund. They carried out medical examinations and consultations according to a schedule. There is no medical officer or paramedic employed as a permanent staff member

³⁷⁸ Ombudsman of the Republic of Bulgaria, Report of the National Preventive Mechanism on an inspection carried out in the prison in Plovdiv, open-type prison hostels "Hebros" and "Smolyan", pre-trial detention facilities in Smolyan and Plovdiv, p. 10.

³⁷⁹ Ibid, p. 11.

³⁸⁰ Pleven Prison, Semi-annual Report of the Pleven Prison for 01.01.2021–01.07.2021, p. 12.

at the Prison. At the end of the year, a medical director was appointed at the Prison in Varna.

This hampers the daily work of the guards and security staff [...]. Sometimes, there is such a small number of guards per shift that it is questionable whether they can cover all guard posts. Prisoners had to be escorted to external medical facilities for consultations on numerous occasions. Emergency medical teams were called on a regular basis³⁸¹.

5.4. Initial examination

Newly admitted prisoners should undergo a thorough initial examination to establish their general physical and mental health. If there are signs of injury, the medical practitioner produces an official report. Prisoners are screened for tuberculosis and undergo other tests. During the initial examination the doctor sets up a personal health record of the prisoner.

The impressions of the majority of interviewed prisoners are that the examinations are superficial and formal: the doctor measures their blood pressure and asks them questions about their medical history and prescriptions. Prisoners were examined at different stages: some saw the doctor the day after admission, others - a week later. According to an inmate in the CTPH Kremikovtsi, if you suffer from an illness, the doctors will not recognize it unless you have the medical documents to prove it.

Some inmates said that they were not examined at all upon admission. An interviewee from the Belene Prison explained this with the fact that he had served a sentence in the past and his personal health record had already been set up.

An inmate from the Bobov Dol Prison stated that a healthcare professional came to the prison reception ward only in the second week of his stay. No formal examination was carried out: the healthcare professional walked through the reception ward of the prison with a tray of medications and asked who needed what.

The most complete and thorough examination of the newly admitted prisoners is performed in the Sliven Prison. According to one of the paramedics there, on the very first day of admission a medical examination is carried out to establish the health status of the new arrivals. The examination includes diag-

³⁸¹ Varna Prison, *Annual Report 2020*, p. 6–7.

nosis of major organs, blood pressure, registration of scars and tattoos, blood samples for syphilis and HIV, establishing prior conditions and accompanying diseases, if there are any, and whether the inmate needs dietary nutrition. One inmate confirmed that upon admission to prison she had undergone, among other things, a gynecological exam and had been tested for HIV and syphilis. Due to her medical conditions, she had been referred to a cardiovascular specialist and an endocrinologist.

5.5. Outpatient admission

As a general rule, prisoners can visit the medical center only within a specific slot reserved for their prison group. In addition, to be taken for examination on the scheduled day, they must register in the group examination roster, kept with the post guards. We received complaints that even when these conditions were met, prisoners were not called in for examination or doctors refused to see them. Outside of this schedule, prisoners may be admitted to the medical room in case of an emergency. Inmates we spoke with complained that if a problem arose outside of scheduled days, it was very difficult to receive any medical care. One of them said that he had pleaded to be examined outside his group's allotment and although he had a serious problem, he was refused.

According to testimonies, this procedure of registering for a doctor's appointment is no longer applied in the Plovdiv Prison; instead, the prisoner has to tell a guard who then contacts the doctor. If the doctor chooses to do so, she sees the prisoner, but often she does not. An inmate from that prison stated that access to the medical center "is granted at the mercy of the guards", and that there is a „bad" guard shift, during which even seriously ill prisoners are afraid to complain of their problems.

At the JCFB in Vratsa, a nurse from the Vratsa Prison Medical Centre visits the facility every day. However, juveniles complained that they had to miss classes to be examined. As a rule, examinations there are carried out in the presence of a prison guard, which is in breach of international standards on the confidentiality of communication with medical professionals.

The total number of outpatient examinations carried out in the medical facilities of the places of detention in 2020 was 149 038; it was 141 481 in 2021³⁸². According to the doctor and the nurse in the Sofia Prison, their workload is high. About 90 persons a day visit the medical center, 50 of which come for examination and 40 for admission for treatment. According to the estimate

³⁸² GDEP, Annual Report 2021, p. 55.

of the paramedic in the Pazardzhik Prison, the number of inmates examined in the medical center is about 30 per day.

For emergency cases during off-hours or if, for some reason, there is no medical professional available or the case is not within their competence, the penitentiary facilities rely on the emergency medical services. In off-hours, the assessment of urgency is made by the guard on duty. If the case is not an emergency, the guards might provide painkillers or bandages.

5.6. Consultation with a medical specialist and medical-diagnostic services

Prisoners' access to consultations with medical specialists and medical-diagnostic services is particularly difficult. For many inmates, this means months of waiting for examinations and tests, delayed diagnosis and treatment, and, as a result, worsening health problems.

As a rule, the medical facilities in penitentiary institutions do not have the necessary capacity and equipment to carry out consultative examinations and specialized diagnostics. If necessary, patients should be referred to external specialists and external medical facilities. As already stated, medical referrals for these services are issued by the staff doctors of the penitentiary or by the appointed in-house GPs. This process can be very time-consuming, depending on when the prison is visited by a doctor – and if at all. There are two procedures for external examinations: either the patients are escorted out of prison, or the doctors visit the place of detention. In the first case, the external appointment is arranged by the prison medical staff, and his or her escort is the responsibility of the prison governor. However, the shortage of security staff has an impact on the capacity of the prison staff to escort inmates for examinations. The 2020 annual report of the Sofia Prison states that “[t]he number of disease incidence and the number of external examinations required is increasing enormously. Even with maximum deployment, we are finding it difficult to carry out all the necessary escorts for examinations. For example, two or more escorts are needed for one Medical Disability Commission (MDC). This year we currently have made 22 MDCs”³⁸³.

Due to the logistics, the prison administration's preferred option is to arrange examinations on site where possible. To do this, they prepare a list of patients who need to be examined by a medical specialist. The relevant specialist with whom the prison works arranges a convenient date and the examinations are carried out in the prison. However, there is a risk of delaying necessary con-

³⁸³ Sofia Prison, *Annual Report 2020*, p. 85.

sultations. Prisoners in Lovech reported that such visits were very difficult, because the Lovech hospital was barely functional and doctors were overloaded.

The medical center at the Pazardzhik Prison has arrangements with an ophthalmologist, an ENT specialist, a skin doctor, a surgeon, an orthopedic surgeon, an oncologist and a psychiatrist. They examine inmates when a list of complaints is prepared. In case there is only one patient, or if it is urgent, prisoners are escorted to an external medical facility. The doctors at the Stara Zagora Prison stressed that they have good relations with their colleagues in the city and have established links with specialists: a cardiologist, a gastroenterologist, an ophthalmologist, an abdominal surgeon, a psychiatrist. If necessary, the patient is referred to a specialist.

TABLE 3. Examinations in medical institutions outside places of detention between 2017 and 2021

2017	2018	2019	2020	2021
3991	3881	4596	3363	4007

Source: Annual reports of GDEP 2017–2021

During prison visits, numerous complaints were received by the BHC about the lack of access to external medical professionals. An inmate from the Plovdiv Prison said that although he had a skin problem, had visited the medical center and it was clear that he needed to see a dermatologist, he had not been escorted for examination. Six months later, his condition was deteriorating: “It seems that one’s condition needs to deteriorate, one’s health condition must be critical, for them to call A&E and have the person attended to.”

5.7. Medicines and medical supplies

According to the regulations, prisoners are provided with the necessary medicines. The director of the medical center is responsible for their supply. In fact, the medical centers of prisons are provided with some basic medicines, which are purchased from the budget of the Ministry of Justice and provided to prisoners free of charge when needed. Testimonies from prisoners across the country indicate that prison physicians mostly treat them with painkillers such as Analgin (a painkiller containing metamizole), Aspirin and Paracetamol. In some cases, there is shortage of basic medication. Researchers followed the case of an inmate from the Sofia Prison reporting to the medical center with an open wound on his foot. The wound was treated at the center, but the inmate was handed a prescription for antibiotics for his mother to buy. This should be

covered by the prison itself. On its last visit to Bulgaria in 2021, the CPT also found a problem with expired medicines in the medical centers, including antibiotics³⁸⁴.

Physicians working in the Department of Justice's medical facilities are authorized to prescribe drugs, medical devices, and dietary foods for special medical purposes. Chronically ill prisoners are entitled to medicines that are paid for in part or in full by the NHIF. Medicines are provided by the medical center, but if there is a need for co-payment, it is at the expense of the patients. Since 2021, there's been a problem with the medical follow-up and medicine prescription for the chronically ill. On 1 July 2021, the state introduced digital prescription books for persons diagnosed with chronic conditions. This is the only procedure for them to get coverage for medical products, devices and dietary foods. However, only GPs under contract with the NHIF can register electronic prescription books and issue electronic prescriptions. Physicians employed by medical centers in the penitentiary institutions cannot have contracts with the NHIF; neither can nurses, paramedics, or other medical workers employed by the detention centers and prisons. Commenting on this case, the Ministry of Justice acknowledged that the isolation of penitentiary physicians from the NHIF makes it "impossible to provide vital products for chronically ill patients"³⁸⁵.

All other medicines prescribed by prison physicians or external specialists, but not available on the medical center's list and not fully covered by the NHIF, need to be paid for by the prisoners. An exception is made for prisoners who have not received funds in the preceding six months, in which case the medicines are covered by the prison budget. None of this is enshrined in the law: buying your own medicines and/or receiving aid for this purpose is regulated via prison orders of dubious legal standing. For example, the drug Clonarex, which is prescribed to a large number of prisoners with mental illness and drug addiction, has to be purchased with personal funds.

We received many complaints that prescribed drugs were not administered because inmates could not afford them. One prisoner suffering from a severe form of psoriasis (his skin was visibly peeling) told us he had nights when he screamed with pain and came in and out of consciousness. He took medications, but they didn't help; the only therapy that brought him relief was a cream, which, however, was not covered by NHIF and the prison couldn't pro-

³⁸⁴ European Committee for the Prevention of Torture, Inhumane and Degrading Treatment, Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022) 20, § 53. (In English)

³⁸⁵ Ministry of Justice, *Report on the activities of the Ministry of Justice from 12.05 to 10.08.2021*, p. 10, available at: <https://portal.justice.government.bg/home/index/d8e9ca25-2cf4-46bc-8537-03b6344b5e96>.

vide enough of it. The inmate was himself an orphan and couldn't rely on any relatives for support. Other inmates have raised money to buy the cream twice, but they couldn't do this on a regular basis. In another case, registered by the NPM, an inmate suffering from thrombophlebitis of the lower limbs couldn't obtain his prescription drugs. He had no money, and the prison administration was unwilling to buy the medication³⁸⁶. The reason was that he had not had any money transfers in the past three months, while to be eligible for aid, he had to spend 6 months without access to funds.

Some medications must be purchased and provided to the medical center by the patient's relatives. For foreign nationals and prisoners who do not have relatives in the vicinity, that might not be possible. We learned that food supplements have also been banned recently, probably as a measure against illegal drugs.

Persons on therapy receive envelopes with the medications for the day. These are prepared by the physicians, who hand them to the guards to pass on to the prisoners.

Prisoners who need medical devices also face difficulties. A prisoner we spoke to needed a hearing aid, which he is entitled to free of charge. As the procedure is complex and requires coordination with external organizations, he needs the assistance of the prison authorities, but they haven't cooperated so far.

Penitentiaries do not purchase dioptric glasses for prisoners, either. In our research we identified at least two cases of prisoners with impaired vision (in Belene and Burgas) who had been prescribed such glasses by ophthalmologists, but did not have the means to buy them. The glasses were later provided by donations.

Figures from prison medical centers show that on the national level, the most frequent diseases among the prison population are those of the cardiovascular, the digestive and the nervous system, as well as respiratory and psychiatric diseases. Table 4 presents data from three prisons in 2020. It is striking that the number of patients under medical supervision in the Vratsa Prison and the adjacent juvenile correctional facility is significantly lower than in the other two institutions. This is likely due to the incomplete registration of cases rather than to the good health of the inmates.

³⁸⁶ Ombudsman of the Republic of Bulgaria, Report of the National Preventive Mechanism on an inspection carried out in the prison in Plovdiv, open-type prison hostels "Hebros" and "Smolyan", pre-trial detention facilities in Smolyan and Plovdiv, p. 11.

TABLE 4. Observed patients in the medical centers of Belene, Sofia and Vratsa prisons by disease groups in 2020

Disease groups	Belene Prison ³⁸⁷	Sofia Prison ³⁸⁸	Vratsa Prison and JCFC ³⁸⁹
Cardiovascular diseases	72	59	2
Digestive system diseases	69	30	1
Genitourinary diseases	17	15	0
Blood and circulatory system diseases	2	2	0
Respiratory diseases	13	58	0
Endocrine diseases	21	26	2
Allergic diseases	2	0	0
Occupational diseases	0	0	0
Surgical diseases	22	12	0
Nervous system diseases	28	66	3
Diseases of the ear and mastoid process	8	3	0
Eye diseases	6	10	0
Gynecological conditions	0	0	0
Oncological diseases	3	3	1
Skin and venereal diseases	9	72	2
Tuberculosis	0	0	0
Mental disorders	19	76	5
Total	291	423	16

5.8. Prison hospitals

³⁸⁷ Belene Prison, Annual Report of the Belene Prison 2020, p. 67.

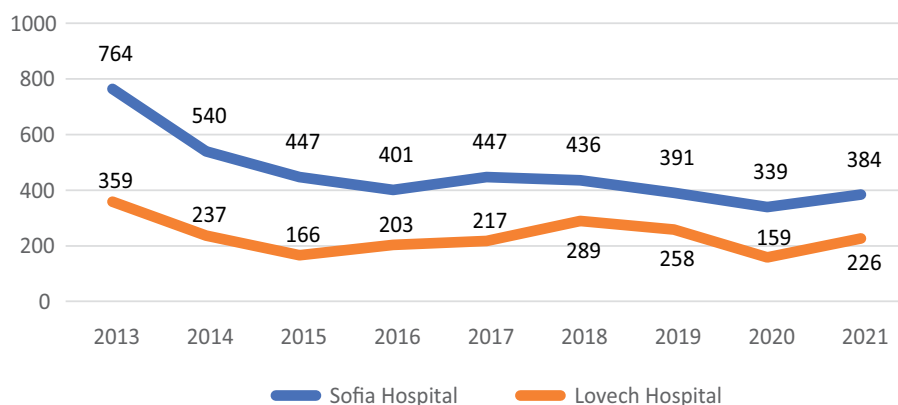
³⁸⁸ Sofia Prison, Annual Report of the Sofia Prison 2020, p. 79.

³⁸⁹ Vratsa Prison, Annual Report of the Vratsa Prison 2020, p. 43–44.

There are two prison hospitals in Bulgaria, situated in the prisons in Sofia and Lovech. These hospitals admit inmates from the entire country. In recent

years, hospital admissions to prison hospitals have been steadily decreasing, with admissions in 2021 almost twice as low as in 2013. This trend can be attributed both to the reduction in the average number of prisoners, as well as to the shrinking number of services in the hospitals.

FIGURE 6: Hospital admissions of prisoners in prison hospitals between 2013 and 2021



Source: Annual reports of GDEP 2013–2021

Since 2015 the Executive Agency „Medical Supervision“ at the Ministry of Health³⁹⁰ and the Ombudsman (Bulgaria's NPM)³⁹¹ have made several inspections at the Specialized Hospital for Active Treatment of Prisoners at the Sofia Prison (SHATP - Sofia). The inspections found that the medical institution does not meet the legal requirements for a hospital. Very limited medical services are offered and their quality is poor. Contrary to the legal definition of a „hospital for active treatment“, the hospital in the Sofia Prison lacks the necessary conditions for the treatment of persons with acute illnesses, injuries, exacerbated chronic diseases and conditions requiring surgical treatment in hospital conditions. The main reason for its critical state is the long-standing, total isolation of the penitentiary health care system from the civil health care system in administrative, financial, methodological and informational terms. This results in shortages in qualified medical staff, poor medical practices, scarce and

³⁹⁰ Ministry of Health, Executive Agency „Medical Supervision“, *Inspection report No. КП-27-61/21.03.2015*; Ministry of Health, Executive Agency „Medical Supervision“, *Inspection report No. КП-631/20.08.2021*.

³⁹¹ Ombudsman of the Republic of Bulgaria, Report of the National Preventive Mechanism on the inspection of the General Directorate „Execution of Punishments: Sofia Prison, the hostels „Kremikovtzi“ and „Kazichene“, the arrests in Sofia at the „Г. М. Dimitrov Blvd.“ and at „М. Vekilski Str.“, 2019, p. 42, available 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>

poor equipment, as well as poor material conditions. The Sofia Prison Hospital serves mostly as a transitional unit where patients wait to be referred for tests, consultations or treatment to the civilian health care system. However, access to external health facilities is not well coordinated and is subject to long delays. Diagnosis and treatment in civil hospitals are particularly difficult when medical services are not or are only partially paid for by the NHIF.

The Specialized Hospital for Active Treatment of Prisoners at the Lovech Prison (SHATP - Lovech) is supposed to provide treatment for prisoners with psychiatric and pulmonary diseases, but an inspection of the Ombudsman in 2019 revealed that the hospital has neither a psychiatrist nor a specialist in pulmonary diseases on staff³⁹².

5.9. Dental care

The state of dental care in prisons can also be described as critical. The main issue is that the NHIF covers a very limited number of dental services, and inmates cannot afford to pay for their treatment. The services are of poor quality as well.

As is the case with general practitioners, the prison dentists are appointed on behalf of the inmates in accordance with the 2020-2022 National Framework Contract for Dental Activities³⁹³.

The Belene Prison has a dental treatment room with new equipment. The dentist is appointed as per the abovementioned procedure and the prison pays an additional 500 BGN per month for extra services. The dentist visits the prison every week or so. In case of an emergency, prisoners may be taken to the doctor's dental practice in the town of Belene.

The dentist who visits the Lovech Prison doesn't have any contract with it. He has agreed to do dental work there because there is nobody else willing to do so. The prisoners themselves pay for his services. He works on Mondays and Wednesdays from 13:00 to 17:00. During the BHC visit researchers received many complaints about the lack of access to dental care. Prisoners would register for appointments, but the prison doctors would not take them in. A prisoner said that he had complained about the lack of dental care, including to the prison governor. She had replied that since the dentist was not an employee of the prison, she had no control over his choices. Another inmate said that he had been to the dentist, but since he couldn't cover his complete treat-

³⁹² Ombudsman of the Republic of Bulgaria, *Annual Report of the Ombudsman as a National Preventive Mechanism for 2019*, p. 19, available at: [https://www.ombudsman.bg/pictures/file/Annual%20Report%20NPM%202019%20\(1\).pdf](https://www.ombudsman.bg/pictures/file/Annual%20Report%20NPM%202019%20(1).pdf).

³⁹³ Ministry of Health, National Framework Contract No. RD-NS-01-3 of 23 December 2019 for dental activities between the National Health Insurance Fund and the Bulgarian Dental Union for 2020-2022, Art. 85.

ment, it had been left unfinished.

During our visit in Plovdiv, there was a long line in front of the prison dental room. Prisoners complained that for a long time there had been no dentist and now there was a „race” to receive treatment. The dentist was absent due to illness. He reported that because of the lack of other medical staff at the center, he had been assigned to carry out health monitoring work at the prison.

In 2020, there was no dentist at the Pleven Prison and dental care was provided by a mobile dental clinic once a week. After the government declared a state of emergency in March 2020 due to COVID – 19, these visits were suspended. Prisoners and detainees were taken to Pleven for dental treatment. However, this practice was very restrictive for prisoners and added more work for the security staff. At the time of the visit in 2021, the prison already had a dental clinic and a new dental chair had been installed. The prison was expecting a delivery of sterilizers and supplies to make the dental office operational. We were told a dentist visits the prison twice a week, but it was not clear which days. During the visit, an inmate complained of toothache for which he was not given pain medication. The reason was that the paramedic could not even provide the popular painkiller Analgin without a prescription from the dentist, who was expected to come the next day.

According to prisoners, the dental care in the Vratsa Prison is unsatisfactory. They pointed out that the dentists (son and mother) worked as external contractors and neglect their duties in the prison in favor of their private practice. The quality of dental care was poor, the work was done in a hurry and the treatment would often drag on for months even when the case called for a change of drugs or a planned intervention. One prisoner complained that he couldn't get treatment despite being in pain for six months. He said that there were inmates who spent weeks with medicine in their teeth instead of having them immediately filled.

A significant number of prisoners have poor dental status, and are in need of partial or full dentures. Unfortunately, the dentures covered by the NHIF require a co-payment of BGN 200, which prisoners cannot afford. An inmate we interviewed at the prison of Burgas had no teeth and no money for dentures; he could only eat porridge or other mushy food. Another prisoner stated that his filling had not been finished, because he had no money. At the Debelt Prison Hostel, a prisoner complained that he had a toothache and had been given a number of painkillers, but had not been taken to a dentist in Burgas. This was because the contract with the dentist had expired.

5.10. HIV, hepatitis C and tuberculosis

The share of people living with HIV, hepatitis C and tuberculosis among prisoners is usually much higher than in the general population, which calls for continuous and targeted efforts to diagnose, treat and prevent the spread of these diseases in prisons. The current national strategy documents for the prevention of these diseases identify prisoners as a specific target group and establish the measures to be taken³⁹⁴. At the same time, the implementation of these measures has been hampered by various factors in recent years, including the shortage of medical staff, limited funding and the disconnect between prisons and the national healthcare system.

All new prisoners should be offered an HIV test. HIV screening should also be performed for inmates from high-risk groups, such as drug users, tuberculosis patients, pregnant women and women in labor, etc. In practice, the penitentiary healthcare facilities do not offer or perform HIV testing because of lack of capacity. In 2006, a joint order of the Minister of Health and the Minister of Justice mandated that the anonymous and free HIV/AIDS counselling and testing services of the regional health inspectorates should visit the country's 12 prisons once a week. Judging by the dramatic decrease in the number of HIV serological tests carried out in recent years, we can conclude that these visits are much rarer and do not cover all penitentiaries. In 2021, only 6.2% of the prison population was tested³⁹⁵. The medical center in the Stara Zagora Prison reports that they do not screen for HIV and no cases have been detected. Prior to the state of emergency due to COVID-19 in 2020, the prison received a letter from the Ministry of Health about an upcoming screening, but it was cancelled because of the pandemic. According to health officials at the Pleven Prison, HIV screening was not performed in 2020 or 2021. The number of HIV screenings is outlined in Table 5.

³⁹⁴ Ministry of Health. National Programme for Prevention and Control of HIV and Sexually Transmitted Infections in the Republic of Bulgaria 2021-2025, pp. 23-26; Ministry of Health. National Programme for the Prevention and Control of Viral Hepatitis in the Republic of Bulgaria 2021-2025, pp. 27-30; Ministry of Health, National Programme for the Prevention and Control of Tuberculosis in the Republic of Bulgaria 2021-2025, pp. 42-43.

³⁹⁵ National Focal Point on Drugs and Drug Addiction. *Annual Report on Drugs and Drug Addiction in Bulgaria*, 2021, p. 157.

TABLE 5. **Number of HIV screenings between 2015 and 2021**

	2015	2016	2017	2018	2019	2020	2021
Number of HIV serological tests	4406	1751	781	875	731	261	365
Number of positive HIV tests	5	2	3	3	3	0	3
Number of prisoners	7408	7345	6988	6651	6448	6251	5873
Percentage of prisoners tested	59,9%	28,8%	11,2%	13,2%	11,3%	4,2%	6,2%

Source: National Focal Point for Narcotics and Drug Addictions, using information from GDEP

In 2019, the Ombudsman raised the issue of the reduced number of HIV tests performed by regional health inspectorates with the Minister of Health³⁹⁶. According to the response published by the Ministry, one of the reasons is that more than half of the detention facilities lack medical specialists on staff³⁹⁷. The document recommends strengthening coordination and cooperation between places of detention and regional health inspectorates.

The Sliven Prison is the exception to the status quo. In Sliven female inmates and medical center staff interviewed confirmed that the initial examination included HIV testing.

In most of the penitentiaries we visited there were no more than three HIV-positive individuals. They could make use of specialized testing and antiretroviral treatment covered by the state budget and provided in conjunction with the specialized HIV clinics in Sofia, Stara Zagora, Plovdiv, Varna and Plevnen. Researchers detected problems with the timely provision of antiretroviral therapy to newly admitted prisoners, and with escorting them for their specialized test appointments. This is particularly true of prisoners serving sentences in cities where there are no treatment facilities for infectious diseases.

For years, prisoners with chronic hepatitis C had virtually no access to treatment, despite having health insurance. The reason for this was that NHIF required patients to have a liver biopsy, which requires extended stay in an external hospital. In 2019, the protocol for hepatitis C diagnosis was changed and biopsy was dropped as a condition for covering costly medications. Since this change there has been an increase of hepatitis C screenings in prisons.

³⁹⁶ Ombudsman of the Republic of Bulgaria, Letter ref. №0404-12/20.08.2019.

³⁹⁷ Deputy Minister for Health, Letter ref. №35-OM-75/18.09.2019.

According to the medical center in the Stara Zagora Prison, they started screening prisoners for hepatitis C regularly in 2019, thanks to a test donation from an American pharmaceutical company. The procedure is as follows: the test is sent to St. Ivan Rilski Hospital in Sofia, where the result is checked with blood in three tubes to identify the genotype and other indicators. While in the past a liver biopsy was mandatory, nowadays the protocol only requires an elastography, which takes a few hours of hospital stay. If the results are positive, after a waiting period of 4-5 months the NHIF will cover an expensive 8-week course of drug therapy. In 2020, 12 prisoners were successfully treated using this procedure. During the BHC visit we were told that the penitentiary is doing a new round of voluntary screenings, with 6-7 new positive patients, five of which were confirmed to have the disease and were on track to receive therapy.

According to data from GDEP, in 2021, with the assistance of NGOs, hepatitis C screening was performed in the prisons in Belene, Bobov Dol, Burgas, Varna, Vratsa, Lovech, Pazardzhik, Pleven, Plovdiv and Sofia³⁹⁸. 1858 individuals were tested with rapid tests, 223 of which emerged as new cases; 117 had a confirmed treatable infection and were issued treatment protocols³⁹⁹.

The Sliven Prison reported a problem with issuing treatment protocols. In 2021, a medical team from Stara Zagora screened all female prisoners in the Sliven Prison for hepatitis C. They diagnosed 12 cases that could be treated with NHIF funding. However, the director of the medical center told us that they could not comply with the medical observation of inmates, which is necessary for the appointment of therapy. The reason are amendments to the legislation from 2021 introducing digital prescriptions and prescription books for patients under medical observation (e.g. having their condition followed as outpatients). However, prison medical centers are not part of the general NHIF system, they do not have access to its software and cannot issue digital documents. In order to solve the problem, at the time of our visit the prison had requested that the 12 patients be appointed an external GP who has access to the NHIF software. It is not clear what is done with regards to the other chronically ill female prisoners who need to be under medical observation.

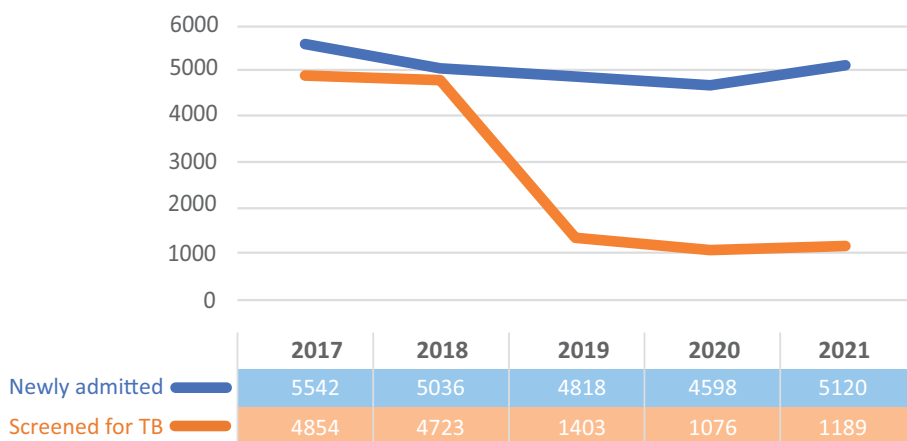
An inmate from the Sofia Prison said that in 2020 he had undergone a three-month medication treatment for hepatitis C, but he did not know what the results were. An interviewee from the Varna Prison complained that he had been diagnosed with hepatitis C, but had not received treatment.

³⁹⁸ GDEP, *Annual Report 2021*, p. 57–58.

³⁹⁹ *Ibid.*, p. 58.

Detention facilities are particularly vulnerable to the emergence of tuberculosis cases and are targeted with special prevention and control measures. According to the legislation, every new prisoner has to fill out a TB risk screening survey during the initial medical examination. Official figures show that this requirement is not strictly observed, with only a quarter of new prisoners being surveyed in 2020 and 2021.

FIGURE 7: Number of new prison admissions and number of TB risk screening surveys 2017-2021



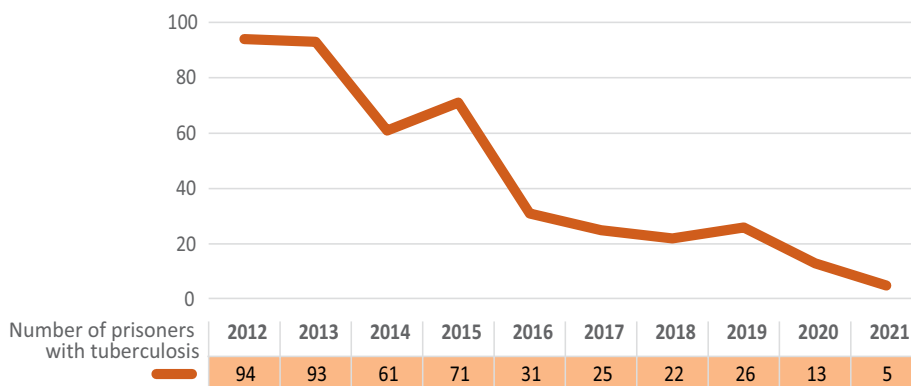
Source: GDEP

Occasionally, external organizations arrange fluorographic screenings for tuberculosis. In 2018, there were 3360 fluorographic examinations performed in detention facilities with a mobile fluorography unit. Funds were provided by the program “Strengthening the National Tuberculosis Program in the Republic of Bulgaria” of the Ministry of Health. 9 individuals were diagnosed with tuberculosis. In 2021, 1883 inmates underwent fluorographic examinations and no cases of TB were diagnosed⁴⁰⁰. The medical staff of the Sofia Prison said that at the time of our visit, 4-5 inmates had tuberculosis. The Second Multi-profile Hospital in Sofia had provided a TB screening machine to 300 inmates and 40-50 prison staff. There were 3-4 cases which were investigated further and only one was diagnosed and subsequently treated. The Vratsa Prison reported one newly registered TB case and in the Plovdiv Prison, one person with suspected TB disease was isolated in the inpatient ward.

⁴⁰⁰ GDEP, Annual Report 2021, p. 57.

TB incidence rates among prisoners are reported to be low and steadily declining. Given the lack of regular screening, the real situation may be different. Tuberculosis patients are treated free of charge in the Department of Pulmonary Diseases of the Lovech Prison Hospital.

FIGURE 8: **Number of prisoners with tuberculosis between 2012 and 2021**



Source: GDEP Annual Report for 2021

5.11. COVID-19

With the COVID-19 pandemic in 2020 and 2021, medical care in places for deprivation of liberty faced new and extreme challenges. However, the spread of the new virus in prisons appeared to be more limited compared to other closed institutions in Bulgaria. Between 13 March and 31 December 2020, 266 inmates were tested with PCR or antigen tests, of which 53 tested positive for COVID-19⁴⁰¹. However, inmates reported that there were many more individuals with symptoms of the disease. Three prisoners died of COVID-19 in 2020⁴⁰², and seven in 2021⁴⁰³.

Measures to limit the spread of the virus included quarantining new inmates for a 10–14-day period, isolating the sick in the inpatient ward of the medical centers or in specifically designated cells, disinfection with bleaching powder and ventilation. Masks were distributed to the prisoners when they had

⁴⁰¹ GDEP, Annual Report 2020, p. 59.

⁴⁰² Ibid.

⁴⁰³ GDEP, Annual Report 2021, p. 58.

to leave to attend trials or other places. Masks produced in the tailoring shop of the Sliven Prison were sold in the prison shops. It was reported that at the height of the pandemic, all medical professionals at the Lovech Prison worked in the quarantined area of the prison, but were not given any protective clothing or gloves, nor were they paid for the extra shifts worked and intravenous therapies administered.

In 2021, prisons initiated vaccination campaigns of prisoners against COVID-19. The number of vaccinated persons varied between institutions; e.g. 54 vaccinated in the Pazardzhik Prison, 117 in the Stara Zagora Prison and 400 in the Sofia Prison.

The measures against COVID-19 have led to a reduction in referrals for examinations and treatment in external facilities. Hospital admissions in 2020 halved compared to the previous year⁴⁰⁴. Other health related duties, such as HIV and hepatitis C screening, were also discontinued.

5.12. Deaths

The statistics on deaths in the Bulgarian places for deprivation of liberty are alarming, but not surprising, given the deteriorating state of medical care. Despite the declining number of inmates in penal institutions, deaths have been rising in recent years, with 2021 seeing the highest number of deaths in prisons and pre-trial detention facilities since 2003 - 55 inmates⁴⁰⁵. In 2021, the mortality rate in prisons is estimated at 86.1 per thousand, the highest in a Council of Europe member state⁴⁰⁶. It is also four times higher compared to the overall mortality rate in Bulgaria⁴⁰⁷.

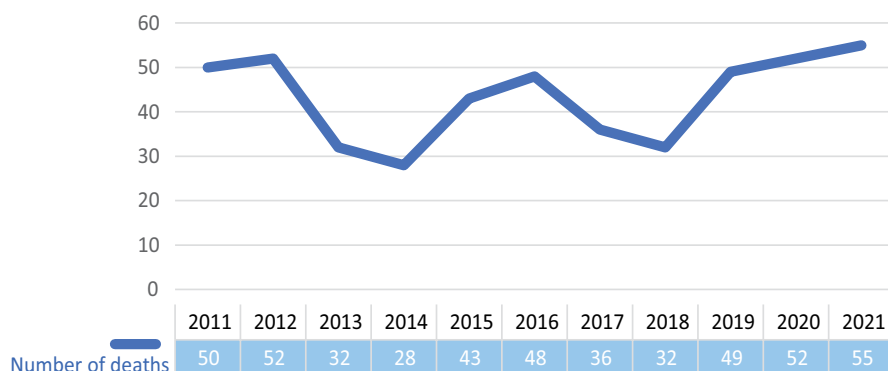
⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid., p. 60.

⁴⁰⁶ Council of Europe Annual Penal Statistics – SPACE I 2022, p. 115, available at: https://wp.unil.ch/space/files/2023/06/230626_SPACE-I_2022_FinalReport.pdf. (In English.)

⁴⁰⁷ National Statistical Institute, Deaths in Bulgaria 2015-2023 - coefficients (data table), available at: <https://www.nsi.bg/bg/content/18121/basic-page/%D1%83%D0%BC%D0%B8%D1%80%D0%B0%D0%BD%D0%B8%D1%8F-%D0%B2-%D0%B1%D1%8A%D0%BB%D0%B3%D0%B0%D1%80%D0%B8%D1%8F-%D0%BF%D0%BE-%D1%81%D0%B5%D0%B4%D0%BC%D0%B8%D1%86%D0%B8>.

FIGURE 9. **Number of deaths in prisons 2011-2021**



Source: GDEP

In 2021, 41% of deaths occurred in a prison hospital, 44% in a place of detention, and the remainder occurred on leave from prison. Noting the high number of deaths outside a medical institution, GDEP wrote in its annual report that "more work needs to be done towards conducting preventive examinations in order to provide timely and adequate medical care"⁴⁰⁸.

The most common causes of death, according to an official document provided by the authorities, are cardiovascular disease, cancer, brain disease, liver disease, and suicide.

5.13. Register of injuries

In response to the CPT's repeated recommendations for the prevention of ill-treatment in places of detention, detailed rules were established for medical certification and registration of all incoming complaints from prisoners about violence, visible signs of violence and in cases of use of physical force or restraint. Initially, the rules were introduced with an order of the Minister of Justice in 2016, and later included in the amendments to the *Rules of the Enforcement of Execution of Punishments and Pre-Trial Detention Act* (REEPPDA) in 2017. According to the newly introduced regulation, persons complaining of or bearing visible signs of violence must be immediately brought before a medical professional for examination, which should be performed in confidentiality. The injuries should be documented in detail and photographed, if the prisoners consent. There should be an opportunity for examination and certification by an independent external medical professional and an obligation to imme-

⁴⁰⁸ GDEP, Annual Report 2021, p. 58.

diately report the incidents and send the documents and photographs to the prosecutor's office. Medical centers should also keep a register of injuries of prisoners, which should record all complaints of violence and detected injuries and include a history and diagnosis of the injury, as well as the prescribed treatment.

The review of GDEP reports on the registered cases of traumatic injuries shows that the highest numbers of entries are in the prisons in Sofia, Sliven and Lovech. The most frequent causes of injuries are those related to carelessness (falling, slipping, at work, at sporting events), self-inflicted injuries due to affect, or fights. The records we reviewed in the course of the research confirm this.

TABLE 6: Number of recorded injuries in places for deprivation of liberty (prisons and pre-trial detention facilities) between 2018 and 2020

	2018	2019	2020
Recorded injuries	704	541	553

Source: Quarterly GDEP reports on cases recorded in the Register of Injuries of prisoners and persons detained on remand 2018-2020

In general, there are no records of injuries resulting from the use of force and restraint by officers, which is surprising and calls into question the reliability of these records. Moreover, each of the quarterly GDEP reports on the cases recorded in the registers of injuries between February 2017 and March 2021 repeats the same conclusion:

The fact that in all cases of use of force and restraint by officers, no injuries to prisoners and persons detained on remand were confirmed and their human dignity was not violated, is positive⁴⁰⁹.

Based on the data and testimonies gathered during our research, the lack of such cases primarily results from the serious shortcomings in the mechanism for violence certification and registration, which compromises its preventive functions.

One obvious problem is that the presence of medical staff in prisons and prison hostels is often limited to a few hours a day. Some places are visited by a doctor or paramedic no more than once a week. There are no records of victims of violence (or injured inmates in general) being taken to outside hospitals during the off-hours of prison doctors.

⁴⁰⁹ For example, in: GDEP, Report on the cases recorded in the "Register of Injuries" and in the "Register of Use of Force and Instruments of Restraint", for the months of October, November and December 2018, p. 5.

Furthermore, a number of inmates alerted us that, even if a medical practitioner is available, the physical examination of abused prisoners is deliberately delayed. Since it is the guards' responsibility to escort the prisoner to the doctor, they may choose when to do this, especially as most claims of abuse are levelled at them. An interviewee at the Pleven Prison claimed that he had been beaten by guards with kicks, fists and batons and had visible injuries on his body. Despite that he was taken back to his cell and escorted to the medical office only the following day. In their official report of the incident, guards stated that they had used force and restrain since the prisoner failed to obey a verbal order. He was then offered medical assistance, guards claim, but he refused, since he „had no injuries and felt well”.

In another case from the same prison, an inmate reported that guards had inflicted injuries to his back, ribs and eye. He was then immediately taken back to his cell, and he was examined only two days after the incident. An inmate from the Bobov Dol Prison also testified that he hadn't seen a doctor after being beaten by guards. He was dizzy, he had a headache and he was so unwell as a result of the incident, that an ambulance had to be called two days later. The doctors examined him and left. However, his condition did not improve and an ambulance was called a second time. The victim was not examined by the prison medical practitioner.

In its reports, the NPM also found evidence of serious irregularities in the medical staff's handling of the registration of injuries:

In 2021, during an unannounced inspection by the NPM team in the Lovech Prison, violations of the paramedic were registered in connection with the registration of a case of a prisoner with visible signs of beating by the prison guards. The Register of injuries, the Register of use of force and restraint and reports prepared by prison staff were reviewed. Letters were sent to GDEP and the Ministry of Justice referring to the findings of the NPM inspection team and requesting an inspection. Following the investigation, violations were found and prison guards, as well as the paramedic were disciplined⁴¹⁰.

One very significant flaw of the mechanism for certification and registration of injuries is that the examinations are performed by medical professionals, which are either staff employees or are hired as contractors by the prison. Thus, they are subordinates of the prison governor and colleagues of the pris-

⁴¹⁰ Ombudsman of the Republic of Bulgaria. Report of the National Preventive Mechanism on an inspection carried out in the Lovech Prison, p. 5, available at: [https://www.ombudsman.bg/pictures/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9B%D0%BE%D0%B2%D0%B5%D1%87%202022%D0%B3_\(3\).pdf](https://www.ombudsman.bg/pictures/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9B%D0%BE%D0%B2%D0%B5%D1%87%202022%D0%B3_(3).pdf).

on guards. When they have to examine and report to the prosecutor's office cases of violence inflicted by prison staff, the lack of independence puts them in a conflict of interest. This reflects on their obligations to fully and objectively record signs of violence and use of instruments of restraint. A telling example is the account of a prisoner who claimed that the prison medical professional had witnessed guards beating him but did not react and did not examine him afterwards. A few days later, after he had started urinating blood, the victim was examined by the same medical professional, who told him, "There's nothing wrong with you and there are other people who decide". During its visit to the Plovdiv Prison in 2022, the NPM came across a curious case whereby the register of injuries was kept by a prisoner, himself a medical doctor. He was probably also performing the examinations of the injured persons⁴¹¹. The NPM considers this practice unacceptable.

A victim of violence may exercise his/her right to be taken for examination and certification to an independent external doctor only if he or she explicitly requests that. This tends not to happen. Even if prisoners are aware of this option, the fee of 30-50 BGN, which they have to pay to the external specialist, appears to be a deterrent for them.

The descriptions of injuries that researchers read were often brief and incomplete. For example, the records in the Plovdiv Prison register of injuries were limited to the name of the inmate who sought care and the type of trauma. Occasionally, the records also included the information that the trauma was inflicted after a fight with another prisoner. There were no records of an injury inflicted by a prison guard. The register itself contained a document with a drawing of the human body that showed exactly where the trauma had occurred. This document was accompanied by a physician's examination sheet that briefly and rather illegibly in one or two words explained the type of trauma and the type of wound treatment.

Medical professionals do not strictly fulfil their obligation to notify the prosecutor's office of every case of registered injury. For example, in its reports on the registers of injuries GDEP states that in some penitentiaries, the prosecutor's office was notified only when the medical professional had established that a crime under Art. 205, para 2 of the CPC had been committed⁴¹². However, this is contrary to the specific provision of Art. 119, para 4 of the EPPDA, which

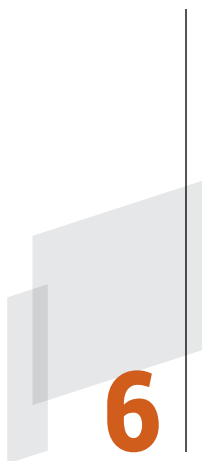
⁴¹¹ Ombudsman of the Republic of Bulgaria, Report of the National Preventive Mechanism on an inspection carried out in the prison in Plovdiv, open-type prison hostels "Hebros" and "Smolyan", pre-trial detention facilities in Smolyan and Plovdiv, p. 11., available at: <https://www.ombudsman.bg/pictures/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%9F%D0%BB%D0%BE%D0%B2%D0%B4%D0%B8%D0%B2%202022%D0%B3-%20%D1%82%D0%BE%D0%B7%D0%B8.pdf>

⁴¹² GDEP Report on the cases recorded in the "Register of Injuries" and in the "Register of Use of Force and Assistance", for the months of January February and March 2020, p. 4-5.

says that the prosecutor's office shall be notified without any discretion on the part of the medical professional. Another violation cited was that not every medical professional attached a photocopy of the certification forms to its reports to the prosecutor's office⁴¹³. During our visit in the Debelt Prison Hostel, the paramedic stated that it was not usual practice for the prison's medical staff to submit reports to the prosecutor's office, while in fact this is their legal obligation.

We also established problems with the storing and filling of the register of injuries. In the Bobov Dol Prison, the register is stored with the prison administration and not in the medical center because, according to the prison governor, the paramedic is unable to manage it. When we visited the Plovdiv Prison, it was initially unclear who keeps the register and where. Employees tried to locate it first in the medical center and then with the guards. It was finally brought by an employee to the reception room of the prison governor. It was clear that most of the entries were written by the same person. The prison governor explained that this was the physician assigned to the prison under contract with the NHIF. The explanation for the other entries was that perhaps the register had been filled in by guards or orderlies on duty at the medical center.

⁴¹³ GDEP Report on the cases recorded in the "Register of Injuries" and in the "Register of Use of Force and Assistance", for the months of October, November and December 2020, p. 5.



DISCIPLINARY PRACTICE

Disciplinary practice (rewards and sanctions) is the main means to control the behavior of prisoners. They encourage positive behavior and sanction violations of internal order and regime requirements. Rewards and sanctions have a direct and immediate effect on the progress of prisoners within the system. Therefore, it is very important that rewards and sanctions are imposed in compliance with the principles of lawfulness, predictability and common sense.

6.1. Rewards

Between 2017 and 2020, there has been a sharp drop (around 40%) in the number of rewarded prisoners. Despite a reported increase in rewards in 2021, there is still a 30% decrease compared to 2017. The drop is even sharper when it comes to rewards involving leaving prison – visits outside the penitentiaries and home leave. This trend cannot be explained solely by the decline in the average prison population, which is down by 13% over the same period.

FIGURE 10. Number of prisoners rewarded by year and type of reward 2017-2021



Source: Annual reports of GDEP 2017–2021

Prisoners are rewarded for “good discipline, cooperation during social and educational events, success in work, sports, cultural activities and other positive actions”⁴¹⁴. Participation in competitions and celebrations is the most frequent reason for rewards. Rewards are given to employees, volunteers, representatives of amateur bodies, students. Accordingly, the infrequent organization of activities and classes and the limited access to work mean that many prisoners, especially those in closed-type institutions, are unable to show themselves in a positive light and earn a reward. Moreover, the law allows for wide discretion in determining rewards. We heard complaints that for participation in the same event, a celebration, some inmates were given a reward and others were not. “False witnesses and informers are rewarded” said a prisoner from the Sofia Prison. An inmate from the CTPH Kremikovtsi resented that even though he worked, participated in sporting events and “assisted” the guards, when necessary, his rewards did not progress. He received several written commendations and was promised an extended visit after the second one. However, he did not get one as his social work inspector changed and the officer said he “doesn’t know him”.

⁴¹⁴ EPPDA, Art. 98, § 1.

During our research, we learned of rules introduced by the prison authorities, according to which a prisoner cannot receive more than one reward per three-month-period, and a prisoner cannot be rewarded until his sanction has been expunged, which generally takes one year. These rules have no legal basis and result in unreasonable delays in prisoners' progress within the system.

Rewards can be divided into two general categories depending on whether they feature activities inside or outside the prison. The first category includes written commendation, expungement or revocation of disciplinary sanction, extra food parcel, monetary or material reward, extended visit for up to 4 hours. The second category includes visiting relatives outside of prison, prison hostel or correctional facility for up to 12 hours; monthly home leave of up to two nights; home leave for up to five nights; use of annual leave outside the OTH. The reward most desired by inmates is "home leave," and the one most frequently given is written commendation.

TABLE 7: **Number of prisoners rewarded by type of reward in 2021**

Written commendation	2916
Expungement or revocation of disciplinary sanction	26
Extra food parcel	546
Monetary or material reward	19
Extended visit for up to 4 hours	1472
Visiting relatives outside of prison, prison hostel or correctional facility for up to 12 hours	598
Monthly home leave for up to two nights	735
Home leave for up to five nights	1178
Use of annual leave outside the OTH	208

Source: GDEP Annual report 2021.

In our observations, the Stara Zagora Prison issued the largest number of rewards in 2020 – 1175⁴¹⁵. The ratio between sanctions and rewards there is overwhelmingly in favor of rewards, which are four times more than the sanctions. It is also remarkable that 70% of them are "home leave" or "visiting relatives outside of prison", while in other prisons this percentage is significantly lower. In the first six months of 2021, the Stara Zagora Prison imposed 153 sanctions and gave 752 rewards.

⁴¹⁵ Stara Zagora Prison, *Annual Report 2020*, p. 3.

TABLE 8: Rewards in the Stara Zagora Prison in 2020

Type of reward	Number
Written commendation	144
Expungement or revocation of disciplinary sanction	19
Extra food parcel	26
Monetary or material reward	6
Extended visit for up to 4 hours	146
Visiting relatives outside of prison, prison hostel or correctional facility for up to 12 hours	107
Monthly home leave for up to two nights	575
Home leave for up to five nights	108
Use of annual leave outside the OTPH	44

Source: Stara Zagora Prison Annual Report

6.2. Sanctions

The 2017 legislative amendments narrowed the range of disciplinary offences for which the most severe disciplinary sanction, isolation in solitary confinement for up to 14 days, may be imposed. Only the most serious offences, or offences, which are committed systematically, may be sanctioned in this way. The change came in response to recommendations by the CPT to reduce the use of punitive isolation in the Bulgarian prisons. An analysis of disciplinary practice data for the period between 2016 and 2021 shows that the reform has achieved its goal and the use of the most severe disciplinary sanction has been reduced threefold, from 1,915 times in 2016 to 656 in 2021 (Table 9). For the same period, however, the total number of disciplinary sanctions has increased relative to the average number of prisoners: from 666 sanction per 1,000 prisoners in 2016 to 791 per 1,000 in 2021⁴¹⁶. While the use of “isolation in solitary confinement” has decreased, the use of sanctions such as “withholding of food parcels” and “written warning” has increased. Regardless of its type, a disciplinary sanction imposed is a barrier for the prisoner to serve under lighter regime, to transfer to an open-type hostel or to be released early.

⁴¹⁶ BHC calculations made by dividing the number of sanctions imposed by the average number of prisoners for the year in question and multiplying the result by 1000.

TABLE 9. Number of sanctions imposed by type and year between 2016 and 2021

Type of sanction/year	2016	2017	2018	2019	2020	2021
Written warning	686	955	1088	1054	1154	1257
Extra cleaning and hygiene duty for up to 7 days	1422	1824	1595	1605	1564	1658
Cancellation of an unused reward	33	25	39	45	14	23
Prohibition to participate in collective events inside and outside places of detention	217	316	264	354	209	321
Withholding of a food parcel for up to 3 months	383	1065	1294	956	755	928
Cancellation of the right to monthly home leave of prisoners serving a sentence in an open-type prison hostel for up to 3 months	33	36	44	59	32	33
Isolation in solitary confinement for up to 14 days	1915	1183	896	849	785	646
Isolation in solitary confinement for up to 14 days outside working and non-school hours, on weekends and holidays for a total of up to 14 days in a total of 3 months	88	33	65	35	36	32
Total	4940⁴¹⁷	5433	5285	4957	4549	4898

Source: annual reports of GDEP 2016–2021

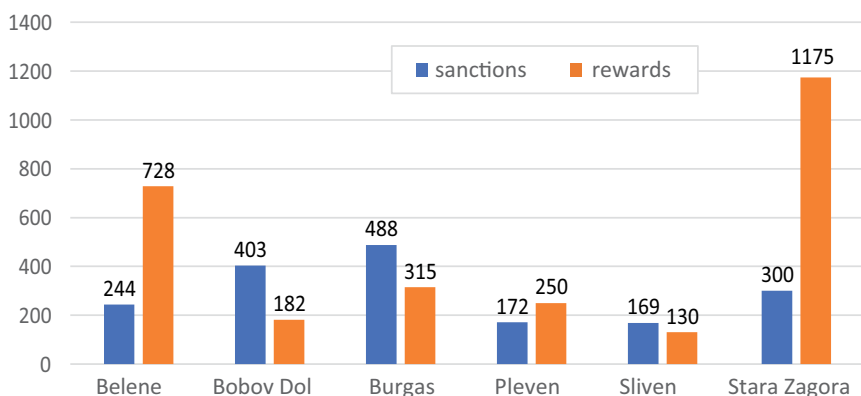
The practice of imposing disciplinary sanctions varies considerably between penitentiary institutions. As per management data, in 2020, there were 312 disciplinary sanctions imposed in the Debelt Prison Hostel. The number of sanctions in this facility stands out in comparison with the other units of the Burgas penitentiary: 82 for the main prison and a total of 44 in the two open-type hostels. According to a prison representative, the reasons for this involve poor legal culture, poor self-control and a tendency for impulsive behavior among the prisoners. We believe that there are other important reasons such as the poor prison environment, the overcrowding, the lack of work and other meaningful activities, as well as the difficulties prisoners' relatives face in visiting the prison due to its location and the lack of public transport. Prisoners in

⁴¹⁷ There is a discrepancy between the data on the total number of penalties imposed in 2016 and the actual total of the different types of penalties. The data are taken from the GDEP, *Annual Report 2016*, p. 11–12.

the Debelt Prison Hostel complained that “guards write reports about anything and everything”. Debelt is also the prison with the worst sanctions to rewards ratio, whereby sanctions are more than three and a half times the rewards.

Considering the penitentiary system as a whole, the number of rewards remains higher than the number of sanctions, but the gap between them is steadily narrowing. While in 2016 rewards were 2.3 times more than sanctions, in 2021 they were only 1.6 times more. The ratios of sanctions to rewards in different prisons also vary considerably (Figure 11).

FIGURE 11. Number of sanctions and rewards in six prisons in 2020



Source: Annual reports of Belene, Bobov Dol, Burgas, Pleven, Sliven and Stara Zagora prisons for 2020

Both official data and prisoners' interviews show that the most frequent offences leading to disciplinary sanctions are related to the possession of unauthorized items (mainly mobile phones), to disobedience of orders, to physical and psychological violence between prisoners, and the possession and use of alcohol and drugs. Inmates complained of frequent searches of dormitories, which involved the scattering of their belongings, the breaking of furniture and the smashing of walls in search of hidden items. However, the damage done during the searches was not repaired afterwards. Researchers saw such damages during their visits. Sanctions are also imposed when guards find authorized equipment, an electric kettle, for example, for which the prisoner does not have a receipt or an official note from the prison administration allowing to bring it on prison premises. When the guards discover an unauthorized item or one without a receipt, they issue a seizure warrant. The guards who have carried out the search write a report on the case, the prisoners give written explanations, and the prison governor decides whether and what sanction to

impose. The use of urine drug tests is on the rise in recent years, up from 250 in 2018 to 881 in 2021⁴¹⁸. A positive test or a refusal to get tested results in disciplinary action.

The exchange of items is also a disciplinary offence. In one case, a prisoner was sanctioned for giving toilet paper and toothpaste to another prisoner. A prisoner was also sanctioned for giving biscuits to another prisoner while outdoors. An interviewee said that he had been sanctioned for leaving sugar and a soft drink outdoors, so that his brother, who was in another group and had no other relatives and no money to shop at the prison store, would find it. Eventually a guard found the bag and both of them were sanctioned. We also heard complaints about sanctions imposed for taking bread out of the canteen.

Regarding the disciplinary procedure, some interviewees stated that they had not been heard by the prison governor. Others said that a hearing was held, but that it was irrelevant because the commission had already decided to sanction them.

Since February 2017, cases of appeal against the disciplinary sanction "isolation in solitary confinement" are subject to the jurisdiction of the local administrative court. All other sanctions are appealed administratively. Sanctions imposed by the prison governor are appealed to the director of the GDEP and the sanctions imposed by the head of prison hostel are appealed to the prison governor that the hostel is a part of. In 2021, 4% of all disciplinary sanctions were appealed, compared with 7% in 2019.

Analysis of the data on appeals of disciplinary sanctions shows that the number of appeals has decreased in proportion with the decrease in the number of sanctions "isolation in solitary confinement" (Table 10). An appeal against an order for solitary confinement must be lodged within three days of receiving the order and, in general, the appeal does not stay the execution of the sanction. A prisoner said that in order to prevent the lodging of appeal with the court within three days, the prison administration served the orders on Fridays. This makes the process of appealing against solitary confinement on the weekends extremely difficult. For some prisoners, the fee of BGN 10 to be paid when lodging the appeal to court is also an obstacle. There are also attempts to appeal other disciplinary sanctions, but prisoners mostly abstain from that since the case law on the admissibility of appeals is not settled.

⁴¹⁸ National Focal Point on Drugs and Drug Addiction. Annual Report on Drug and Drug Addiction Problems in Bulgaria, 2021, p. 154.

TABLE 10. Number of appeals against orders imposing disciplinary sanctions between 2016 and 2021, by type of appeal, result and year

	2016	2017	2018	2019	2020	2021
Orders appealed to the courts	245	147	117	83	54	80
Orders repealed	47	41	21	16	16	8
Orders appealed to GDEP	103	85	78	65	55	95
Orders repealed	6	1	9	0	3	1
Orders appealed to the prison governor	N/A	N/A	N/A	30	53	44
Orders repealed	N/A	N/A	N/A	3	10	2

Source: Annual reports of GDEP 2016–2021

Solitary confinement aside, the increased number of other sanctions is not matched by a corresponding increase in the number of administrative appeals. Data shows that the proportion of decisions repealed by the GDEP is negligible, which discourages sanctioned persons from using this remedy. In their interviews, prisoners often said that they hadn't appealed their sanctions because they did not see the point, since appeals were always rejected by the higher authority. The regulation of the appeal procedure is brief and does not guarantee the fair resolution of the dispute.

The sanction "isolation in solitary confinement for up to 14 days" is typically served in the prison's high-security area. If there is no solitary confinement (or „kartzer", in prison slang) in the prison facility, as there is none in open-type hostels, the prisoners are transferred to the high-security areas of the main prison to serve their sanction.

Conditions in solitary confinement are significantly worse than in other parts of the prison. For example, one of the solitary confinement cells in the Sofia Prison measures only 2.00 x 2.50 m, with two beds and a toilet, without any partition. At the time of the BHC visit the cell was dirty and neglected. Another solitary confinement cell seen by researchers in the Plovdiv Prison also appeared rather neglected. The cell was about 6 sq. m., there was no bed, but a fixed platform about 20 cm above the ground. The mattress was not placed on the platform, but directly on the concrete floor. A sink and squat toilet were located only about 1.20 m away from the mattress without a barrier preventing odors. An inmate described the conditions as „disgusting", explaining that he avoided meals before entering the cell so that he wouldn't have to go to the toilet in the presence of another prisoner.

We also visited a solitary confinement cell in the Pleven Prison. The room was about 9 sq. m., narrow, long, with a small window, a bunk bed and a walled-off toilet. Due to the lack of lighting, the room is dark during the day, especially in the area next to the door where the bed is located. There is no table or electric sockets in the cell.

The solitary confinement cell visited in the Pazardzhik Prison was in good condition. It was painted yellow, with a white ceiling and a tiled floor. The equipment consisted of a metal bed without a mattress, a cupboard and a table with a stool. The cell had a window that provided good lighting. The bathroom had a metal toilet seat, sink and window. The cell door had an opening of approximately 0,5 sq. m. for observation and for serving food. There were no beddings in the solitary confinement cells in the Pazardzhik Prison. It was not clear whether prisoners are provided with them when in isolation.

While prisoners are typically alone in solitary confinement, it is possible to have two people in a cell if there is more than one sanctioned prisoner. Since 2017, the law prohibits single isolation for juveniles. One inmate from the Sofia Prison told us that during solitary confinement, visits were allowed, but receiving food was not. Smoking in the cell was prohibited - it was only allowed during outdoor time. An inmate housed in the CTPH Troyan told us he was sanctioned with 14 days of solitary confinement for fighting. The solitary confinement cell was furnished with a bed, a table without a chair, a tap, and a toilet, which was not separated from the rest of the room. He said that he was not allowed to have visitors during his solitary confinement. He was allowed to shop in the prison store and use his outdoor time. No smoking or coffee were allowed in solitary confinement. An inmate in the Bobov Dol Prison was sanctioned with solitary confinement for 5 days. He said that there was a small sink and a toilet in the solitary confinement cell, but it was dirty. There was no radio or television and no newspapers. The cell was stuffy and the opening in the cell door was shut, so fresh air couldn't come in. Meals were served in the cell. During solitary confinement, visits were allowed, but food parcels were not. In order to use the telephone, he had to plead with the guards as there was no telephone in the cell.

6.3. Use of force and instruments of restraint

Force, instruments of restraint and firearms may be used in places for deprivation of liberty only when absolutely necessary and for purposes which are strictly defined and explicitly regulated by law. Their use must also be adapted to the specific situation, the nature of the offence and the personality of the offender.

Instances of use of physical force and instruments of restraint have to be documented in special prison registers. The quarterly reports of the GDEP on the cases recorded in the registers between 2017 and 2020 show an increase in the use of force and instruments of restraint, or at least an increase in the registration of incidents⁴¹⁹. This trend stands out even more against the backdrop of the decrease in the prison population.

TABLE 11. Registered cases of use of force and instruments of restraint 2017-2020

2017 (from February on)	2018	2019	2020
147	169	174	175

Source: GDEP

These reports also show that the most frequent reasons for the use of force and instruments of restraint are the disobedience of prisoners, the need to protect the life and health of prisoners and fights between prisoners. However, another reason that occurs less frequently is aggression or an attempt to assault a staff member.

Persons who have been subjected to the use of force or instruments of restraint should be provided with immediate access to a medical professional for examination and certification, and the prosecutor's office should be notified. These measures exist to prevent ill-treatment. Observation shows that this does not happen in practice⁴²⁰. It is remarkable that every quarterly report of the GDEP on the recorded cases of use of force and instruments of restraint from 2017 to 2020 declares that there were no documented cases of confirmed injuries (including abrasions or bruises) sustained by the persons against whom these measures were used. The credibility of this data is highly questionable in the context of the numerous complaints from prisoners about injuries caused by the prison guards, and in the absence of well-functioning measures to prevent ill-treatment.

In 2017, the Prosecutor's Office began to collect and summarize data on prosecution files and pre-trial proceedings initiated for violence exerted by guards in prisons and pre-trial detention facilities. Analysis of the data shows that the impunity in cases of ill-treatment of prisoners continues. In six years, there were 363 prosecutors' files on violence, most of which were closed; 38 pre-trial proceedings were initiated, and only two were submitted to court, one

⁴¹⁹ Information received by BHC under the APIA from GDEP by Decision №1902/2 of 08.06.2021.

⁴²⁰ See chapter Medical care, subtopic Registry of injuries.

of which was a request for exemption from criminal liability with an administrative penalty. The outcome of these court cases is unclear.

TABLE 12. Progress of prosecution files and pre-trial proceedings (PP) initiated for violence by officials in prisons and pre-trial detention facilities between 2017 and 2022

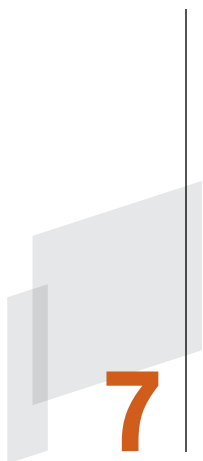
	2017	2018	2019	2020	2021	2022
Current files	56	59	78	85	58	77
Initiated files	49	56	73	76	46	63
Closed files	43	59	67	76	48	63
Current pre-trial proceedings (PP)	3	8	13	18	13	19
Initiated PP	3	5	10	7	6	7
Closed PP	0	7	3	11	3	7
Temporarily discontinued PP	0	0	0	2	1	3
Terminated PP	0	6	3	9	2	3
PP submitted to court	0	1	0	0	0	1

Source: Reports on the implementation of the law and on the activities of the prosecution and investigative bodies 2017–2022

In the course of our work the most numerous reports of violence came from the Pleven, Bobov Dol and Pazardzhik prisons. According to inmates, guards mostly used physical force when they were angry that they couldn't find mobile phones or drugs during a search. Such searches could be carried out at any time during the day or night. We heard of a case in Bobov Dol whereby a search for mobile phones was conducted at 22:30, and inmates were beaten to the point where screams could be heard from their cell. One inmate was so seriously injured that his cellmates had to search for a "sleeping sponge" (a foam pad that is placed over the mattress of the bed), as he was in severe pain. The guards then threatened the beaten man to withdraw his complaints. An inmate said that he was systematically physically and mentally abused by a guard, because he was assisting a police investigation against another officer who was caught bringing cell phones and drugs into the prison. Finding drugs or alcohol on inmates, refusing to do a job, and breaking up fights between inmates were other situations provoking the excessive use of force and instruments of restraint, according to prisoners. Violence also occurred for very minor reasons, for example for taking food out of the prison canteen. Such incidents were reported to us by prisoners from the prisons in Pleven, Pazardzhik and the CTPH Troyan.

Violence is often accompanied by racist or homophobic slurs. An inmate who was caught with drugs in the Burgas Prison claims that he was put in a cage on the first floor of the prison, where he was kicked and beaten by 7-8 guards, who yelled „Shut up, you gypsy“. In the Pazardzhik Prison, there were multiple reports that one warden targeted Roma inmates specifically. Researchers were told that he would beat and insult Roma people with epithets such as “animals” and “mangali” (a racist slur).

The incidents inmates talked about usually happened in places where there was no video surveillance: in “buffer rooms”, distribution wings, and bathrooms. For example, a number of reported incidents at the Pleven Prison happened at two cells near the entrance of the prison, opposite the premises of the guards. Since they are used for searching newcomers and as waiting rooms, they are not surveilled.



HIGH SECURITY AREA

7.1. Summary

The high security area (HSA) is a separate part of the prison which houses those serving harsher sentences. The high security regime usually involves living in permanently locked cells, more supervision and no collective activities. Isolation in solitary confinement may be used as a sanction, but it can also serve to prevent escape or attacks on the life and health of others (placement under Article 120 of EPPDA). Isolation may also be part of the sentence itself (such as life imprisonment and life imprisonment without parole).

The law lists several categories of prisoners to be accommodated in HSA:

- those serving a sentence of life imprisonment or life imprisonment without parole who serve under either special or strict regime and are banned from accessing common spaces.
- those serving under a special regime;
- accused persons and defendants remanded in custody on a charge which carries a sentence of more than 15 years or life imprisonment (Article 248 of the EPPDA);
- prisoners who are isolated as a security measure under Article 120 of the EPPDA;
- those serving a disciplinary sanction of solitary confinement.

Our field visits show that in addition to the above, HSAs in the prisons in Varna, Belene and Sliven are also used to accommodate prisoners under Article 60 of the EPPDA. According to this provision, the prison governor may establish separate units for prisoners deemed socially dangerous, for prisoners

suffering from alcoholism or drug addiction, for persons with mental disorders or for vulnerable persons. The purpose of their separation is to ensure their safety and the safety of other prisoners and staff. However, this does not mean that they should be subjected to additional regime restrictions, which inevitably happens in the HSAs. In the HSA in the Sofia Prison, one cell is designated for the accommodation of minors who are escorted from detention or correctional facilities to attend trial or other activities in Sofia. The detention of minors in HSAs, even for short periods of time, is completely unacceptable and contrary to national legislation.

The HSAs in different prisons have different occupancy levels. As of 7 October 2021, the Sofia Prison HSA had 24 occupants: 8 inmates sentenced to life imprisonment, 7 - to life without parole; 1 serving a sanction of solitary confinement and 8 non-convicted persons, remanded in custody under Article 248 of the EPPDA. During the BHC visit to the Bobov Dol Prison, 14 persons were placed in the HSA, 5 of whom were life prisoners, 7 were held under Article 248 of the EPPDA and two were isolated for security reasons under Article 120. Historically, the HSA in the women's prison has had the least number of inmates, with no female prisoners there as of August 2021: all women sentenced to life imprisonment had received lighter regime and were integrated into the general prison population.

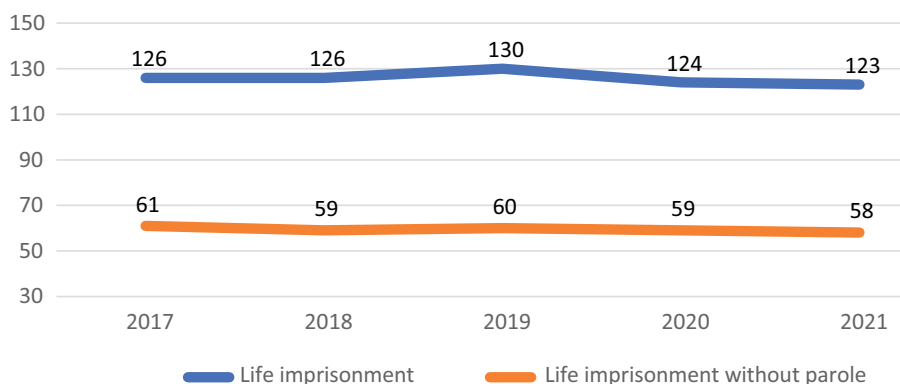
Life prisoners tend to stay in the HSAs the longest - often for decades. For this reason, this section will focus primarily on their situation. Conditions in solitary confinement cells are comprehensively discussed in the chapter *Disciplinary practice*.

7.2. Life prisoners

7.2.1. Number and distribution

The sentences of life imprisonment and life without parole were introduced in Bulgaria in 1995 and 1998 respectively, with the abolition of the death penalty. Since then, the number of inmates serving these two most severe sentences has been on the rise. In 2019, there were a total of 190 life prisoners (with and without parole) in Bulgaria. In 2020, however, for the first time there was a slight decrease. At the end of 2021, they were 181.

FIGURE 12. Number of prisoners sentenced to life imprisonment and life imprisonment without parole in prisons as of 31 December, between 2017 and 2021



Source: GDEP Annual reports 2017 - 2021

We believe that three main factors have contributed for this development. First, the number of imposed sentences of life imprisonment and life imprisonment without parole has been on the decrease. According to the National Statistical Institute, between 2016 and 2018, those sentenced to life imprisonment of both types (with and without parole) were 14, and between 2019 and 2020, they were only 5, almost three times fewer. The second factor is that there is an increasing number of inmates who have served 20 years of their sentence and have acquired the right to request the commutation of their life imprisonment sentence to 30 years' imprisonment. For some of them, the original life sentence has now been commuted to a fixed-year sentence and there are cases of early release.

At the end of 2021, life prisoners made up 3% of the prison population. Of these, 58 were serving a life sentence without parole. There were four women sentenced to life imprisonment. Persons who were under the age of twenty at the time of the offence cannot be sentenced to any form of life imprisonment.

At the end of 2021, the prison in Burgas had the highest number of life prisoners, 23, while the women's prison in Sliven had the lowest, four.

TABLE 13. Number and distribution by prisons of those serving life imprisonment with and without parole as of 31.12.2021.

Prison	Life imprisonment	Life imprisonment without parole	Total
Belene	12	5	17
Bobov Dol	3	3	6
Burgas	18	8	26
Varna	11	6	17
Vratsa	8	3	11
Lovech	4	17	21
Pazardzhik	7	3	10
Pleven	13	4	17
Plovdiv	5	2	7
Sliven	4	0	4
Sofia	13	10	23
Stara Zagora	15	7	22
Total	123	58	181

Source: Annual report of GDEP for 2021

Since the 2017 amendments to the legislation, the number of life prisoners isolated in HSAs has decreased significantly. In 2017, only 14% of life prisoners were commuted and transferred from HSAs to common prison cells. In 2020, that percentage was 53⁴²¹. Our research shows that as of 2021, HSAs hold about 50% of those sentenced to life imprisonment with or without parole.

TABLE 14. Number and distribution of life prisoners isolated in high security areas at the time of BHC visits

Prison	Number of life prisoners in HSA
Belene	7
Bobov Dol	7
Burgas	11

⁴²¹ The calculations are made by the BHC. They are based on the number of life prisoners in the GDEP annual reports for 2017-2020 and data on prisoners released from HSAs presented by the Bulgarian government to the Council of Europe Committee of Ministers in 2021, available here: [https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22DH-DD\(2021\)698revE%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22DH-DD(2021)698revE%22%5D%7D).

Prison	Number of life prisoners in HSA
Varna	11
Vratsa	7
Lovech	(6 or more)
Pazardzhik	7
Pleven	11
Plovdiv	4
Sliven	0
Sofia	17
Stara Zagora	5
Total	92

7.2.2. Living conditions

In recent years, there has been an effort to improve living conditions in HSAs, mostly by installing toilets in the cells, replacing windows and flooring, and repainting walls. Another improvement is the significant decrease in the number of life prisoners, some of whom have been transferred to shared cells. One inmate with a life sentence who had previously won a case about poor living conditions at the ECtHR noted that he had abstained from legal action in the past 5 years, since conditions had improved. However, not all HSAs have been renovated. For example, in Sliven there are still no toilets in the cells. The HSA in the Bobov Dol Prison has not been completely renovated, and a life prisoner complained that his cell had not been renovated in ten years. Meanwhile, new problems have appeared in places that have undergone repairs. For example, the water pipes in the Burgas HSA were replaced, but due to the poor ventilation, condensation on the new plastic pipes caused mold.

The layout of HSAs in Bulgaria varies. They may span either one (Sofia, Sliven, Pazardzhik) or two corridors (Burgas, Stara Zagora, Pleven) in the main prison building, or may be in a separate building (Belene, Bobov Dol), depending on the needs and architecture of the prison facility. Along with the cells, some HSAs have auxiliary rooms, such as gyms (Sofia, Belene, Bobov Dol), kitchen areas (Sofia, Bobov Dol), group work rooms (Sofia, Bobov Dol, Belene, Lovech), visiting and laundry rooms (Belene). In other prisons (Pleven), the corridor for life prisoners includes only cells and a small common bathroom, without any other place for activities or social interaction.

Prisoners in HSAs are usually accommodated in single cells. There are exceptions (Belene, Lovech and Burgas) where some cells held two inmates at the time of our visit. The cells are usually smaller than the minimum standard of 6 sq. m. (excluding sanitary facilities), set by the CPT for single cell accommodation⁴²². Most of the cells visited were approximately 4-5 sq. m. in size, with two of the walls less than 2 m. apart. For example, the cells of life prisoners in Pazardzhik are about 4.2 sq. m. (excluding sanitary facilities): 1.20 m wide and 3.50 m long. When one takes away the area occupied by furniture, the remaining available space is about 2-3 sq. m. The cells in the Sofia Prison measure 2.0 x 3.5 m, including the toilet, which isn't separated from the cell in any way. Inmates in the HSA in the Lovech Prison have larger living space - about 13-14 sq. m.

European standards for minimum living space for prisoners⁴²³

6m² of living space for a single-occupancy cell + sanitary facility

At least 2 m. between the walls of the cell.

At least 2,5 m. between the floor and the ceiling.

Apart from the HSA in Sliven, all cells visited had some sort of sink with running cold water and a toilet. This is a significant progress for the Bulgarian penitentiary system. For decades life prisoners were placed in inhuman and degrading conditions and were forced to use buckets and bottles due to the lack of permanent access to sanitary facilities. International standards require that the toilet be fully partitioned from the rest of the cell. However, few prisons in Bulgaria fulfill this requirement. In the prisons in Lovech, Pazardzhik and Stara Zagora, the cells of life prisoners are equipped with complete sanitary facilities, fully partitioned by walls and a door from the rest of the room. The sanitary unit for life prisoners in Pazardzhik is equipped with a toilet and a sink with a shower; in Stara Zagora - with a metal toilet and a small sink above it; the cells in the Lovech Prison have a squat toilet and a sink. The toilets in some or all of the cells of life prisoners in Belene, Burgas, Bobov Dol, Plovdiv, Pleven and Sofia are not separated, but partially hidden by low walls or curtains. Given the small size of the cells, this means that the toilets are only centimeters away from prisoners' beds. Prisoners eat and spend more than 20 hours a day

⁴²² Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44, p. 1, available at: <https://rm.coe.int/16806cc449>. (In English)

⁴²³ Ibid.

locked in the same rooms. An inmate interviewed said that he had been pouring washing powder down the toilet drain in an attempt to get rid of the bad smell. Life prisoners in the Pleven Prison are forced to live in degrading conditions without any privacy when using the sanitary facilities. Not only are they only partly separated by low walls, but the cells have bars instead of doors and there are cameras outside. The prisoners are under 24-hour video surveillance, with views of the entire cell area, including the toilet.

Life prisoners in most institutions use a common shower room based on a schedule. They are allowed to use it twice a week for bathing and once a week for laundry. The conditions and hygiene in these rooms are generally good. The bathroom in the Lovech Prison's HSA has one shower, three sinks and a mirror. The floor is tiled and the room is warm, bright and clean. The bathroom in the Sofia Prison HSA has three squat toilets, four showers and five sinks; the floor is tiled, there are fluorescent lights and a radiator for heating. At the time of the visit there was an emergency in the bathroom caused by broken pipes. In the Stara Zagora Prison life prisoners use a shared bathroom with three showers, three sinks and mirrors. An exception is the bathroom in the Pleven Prison. It is located at the end of the corridor of the HSA and it measures 1 sq. m. It has a rusty shower and it doesn't have a door, but a nylon curtain. In the prisons of Pazardzhik and Belene showers are placed in the sanitary facilities in the cells. There is no separate room for drying clothes – prisoners use the cells or the common bathrooms. In the Sofia Prison, inmates dry their clothes in the gym of the HSA. The Belene HSA has an automated drier.

It is noteworthy that the cell floors in almost all facilities have been tiled. The exception is the prison in Bobov Dol, where there are still cells with bare cement or linoleum flooring. The walls have also been repainted mostly in light colors.

The cells usually have one PVC window, and its size varies from institution to institution: from 0.5 sq. m. in Pazardzhik to 1.5 sq. m. in Stara Zagora. Cells thus provide uneven access to natural light and ventilation. The cells in the Belene HSA have two small windows, while those in Pleven have no windows at all. The only daylight comes from the windows in the corridor outside the cells. Windows in many places are high up or have additional barriers which prevent prisoners from seeing outside. Artificial lighting is most often provided by fluorescent lights that are always on.

“After you've spent 13 years in 4 sq. m. under non-stop fluorescent lighting, you're dying.”⁴²⁴

⁴²⁴ A quote from an interview with a life prisoner.

The cells in the HSA of the Belene Prison are located directly under the rooftop. All cells we visited had serious issues with the heat and the lack of proper ventilation in the summer, since windows were small and couldn't be fully opened. Prisoners in the HSA in Burgas also complained of the heat during the summer months.

As prisoners from other wings, HSA inmates complained of bedbugs and cockroaches. Pleven was the only prison without a bedbug problem.

Once or twice a week life prisoners clean their cells, a practice called "sanitation day". The prison provides them with floor cleaner and washing powder.

There are no set standards for the furniture in the cells of life prisoners, but it usually includes a metal bed, single or bunk, measuring 0.90 x 1.90 m., a table, a chair or metal stool and a metal cupboard. In some prisons (Lovech, Stara Zagora, Sofia) the cells also have wardrobes. A prisoner from Burgas complained that there was no locker in his cell. The cells are furnished and decorated differently, depending on the means and wishes of each life prisoner. The TV set is one of the most valuable personal items for life prisoners due to the isolation regime and the fact that they live in permanently locked rooms. TV sets are not provided by the prison but are bought by the inmates' relatives. Prisoners in most of the monitored cells had televisions. But some prisoners, mostly people with mental illness and no outside support, did not have TV sets or they were broken beyond repair. Other common personal items we saw in the cells were small electrical appliances (hotplates, electric kettles) and kitchenware, fans, radios, clothes hangers, books, magazines, and documents.

*The cells of life prisoners in the **Pazardzhik** Prison are in the HSA, which has been recently renovated and it looks good. The cells are uniform and measure approximately 1,20 x 3,50 m. without the sanitary unit. They are furnished with a metal bed, a cupboard and a table with a stool fixed to the cell floor. The sanitary unit is approximately 2 sq. m. and has a toilet bowl, a sink with a shower head and a window. The floor is covered with tiles and the walls are clean. Ventilation and lighting are sufficient, with a 1,0 x 0,5 m. window and 2 round lights.*

*In the **Stara Zagora** Prison the standard cell has a bright tiled floor, the walls are painted white and there is a 1.5 sq. m. PVC window. The total area of the cell is about 5 sq. m. The cells are furnished with a bed, a locker, a cabinet with shelves for clothes and personal belongings, a wardrobe, a hanger and a table. The private sanitary unit has a metal toilet bowl, with a 25 x 50 cm. washbasin above it.*

Life prisoners in the **Pleven** Prison live on the third floor. The HSA is a row of cells which have metal bars instead of doors. In front of the cells there is a corridor, which is about 1 meter wide. High on its walls, opposite the cells there are windows and cameras for monitoring life prisoners' cells. Each camera monitors two cells. The cells are identical and all have metal black bars instead of doors. They are furnished with a metal bed, a cabinet, a sink and a toilet bowl at the further end. Attached to the bars there is metal surface for dining measuring approximately 0,4 x 0,6 m. A bench with the same dimensions is mounted to the bed. The bed is 1,90 x 0,90 m. Its headboard, and in some cases the cabinet, serve as a partition to the toilet, less than 1 meter high. The toilet seat itself is approximately 30 cm. from the floor and is positioned parallel to the cell bars, i.e. prisoners use the toilet by standing in profile. This means that if the prisoner is about 1,70 m. tall, while urinating, his private parts are seen by the camera, which is mounted about 2 meters up on the wall of the corridor opposite the cell. Because of this, some of the prisoners had put towels, curtains or newspapers at a height of about 1,90-2,00 m. so that they could use the toilet without being seen on camera.

No other prison in Bulgaria has cells with bars instead of doors or constant video surveillance of the cells. According to the prison authorities, cell doors couldn't be installed because the space is narrow and opening the door would block the corridor. There would also be no access to natural light because the only natural light comes from the windows in the corridor. BHC reported the problem to the NPM who made the following recommendations during a follow-up inspection in March 2022:

- funds should be provided specifically to redesign the entire HSA and remodel the cells. The bars should be removed and the cells relocated in a way that will preserve access to natural daylight, while providing privacy for the prisoners serving life sentences and life without parole.
- a wall from the floor to the ceiling should be erected in the cells to separate the sanitary unit from the rest of the space.

In all HSAs, without exception, meals are served in the cells. In the Stara Zagora Prison, inmates receive their food through a 50 x 50 cm opening in the wall. There were explicit complaints about the quality of the food in the prisons of Bobov Dol and Belene. It is customary in Bulgaria for life prisoners to be allowed to possess and use small electrical appliances for preparing food and drink - usually an electric kettle, a hotplate or a small cooker with oven.

They must buy these appliances with their own money. A prisoner in the Belene Prison noted that as there was no vent in the cell, a lot of moisture formed in the room when he cooked. In the prisons in Burgas, Bobov Dol and Sofia HSAs have separate common rooms with kitchen appliances (hotplate, oven), which the inmates can use on their own according to a schedule.

Life prisoners spend between an hour and a half and two hours a day outdoors. In most places, their time outdoors takes place in dedicated spaces at the HSA. These spaces are smaller and less equipped than the ones available to the general prison population. In Pleven, the two outdoor areas used by life prisoners did not have any exercise equipment. Interviewees from the Bobov Dol and Burgas prisons told us that their outdoor areas had only a weight bench with a barbell. In Belene there are two outdoor exercise areas. One of them is covered with a transparent plastic canopy and the prisoners complained that in the summer the temperature there became unbearably high. The outdoor area for life prisoners in the Sofia Prison is about 500 sq. m., with a urinal and running water. In the Plovdiv Prison, life prisoners go out twice during the day for one hour - before lunch and in the afternoon, and on Fridays they go out in the big prison courtyard.

7.2.3. Contacts with the outside world and financial support

Life prisoners can accept visitors under the same conditions and with the same frequency as other inmates: at least twice a month, for up to 40 minutes. The prison in Belene is an exception, allowing visits every Saturday per schedule. The visiting area is part of the HSA. All meetings are held in partitioned rooms, without any physical contact with the visitor.

According to our observations, more than half of life prisoners do not have any visitors because their relatives have died, live abroad or are no longer in contact with them. Relatives mean emotional support and connection with the outside world, but they are also the main source of finances for life prisoners, due to the very limited job opportunities in the prison. An inmate serving in the Lovech Prison stated that he had no visits and no relatives outside the prison. In the past, he had been visited by a Methodist minister who sometimes provided him with personal hygiene items, underwear, and socks, but he became ill and no longer visited the prison. An inmate in Burgas told us that he had not had any visits for four years, had no correspondence with anyone, no money and relied entirely on the prison and the social work inspector for material support (shaving razors, etc.).

One interviewee who had a partner outside prison said that an essential problem was the lack of intimate visits. Our monitoring also shows that life

prisoners rarely receive an extended visit reward (a visit of up to 4 hours in a room without a partition and with the possibility of physical contact). This reward seemed to be more common in the Sofia Prison where several inmates told us they had had such visits.

In comparison with other inmates who aren't locked in their cells and can make calls throughout the day, life prisoners have limited telephone access. The prison in Belene for example had a schedule for using the phone, which could happen either from 8:30 AM and 11:30 AM or from 2:15 PM to 3:45 PM. Due to the restrictions on physical contact during the COVID-19 pandemic, most penitentiary institutions allowed life prisoners to conduct Skype calls.

7.2.4. Regime and activities

The majority of life prisoners housed in the HSAs serve their sentences under the „special regime“. This is the strictest regime under the Bulgarian law, meaning they are placed in permanently locked cells under heightened security, they cannot take part in activities and they can work only certain jobs which allow for isolation and constant supervision⁴²⁵. They must be separated from the general prison population also when escorted out of prison, during treatment, visits, in their outdoor time and other instances of leaving the HSA⁴²⁶. By law, all life prisoners are placed under special regime at the beginning of their sentence, regardless of the individual risk they pose to security and order in the prison. In other words, the special regime is always a part of life imprisonment and life imprisonment without parole. The penitentiary legislation was amended in 2017 following a series of ECtHR judgments against Bulgaria. The judgments concerned life prisoners serving their sentences in poor conditions and under a highly restrictive regime for long periods of time, in violation of the prohibition of inhuman and degrading treatment. The amendments introduced an obligation for the prison governor to review at least once a year the motives for the continuation of the special regime for life prisoners, as well as the right of the prisoner to challenge the governor's decision in court. These changes had a positive effect, with more life prisoners whose regime has been commuted or who have been relegated to shared cells. However, life prisoners who continue to serve their sentences under the special regime in HSAs remain in excessive isolation, with limited physical and intellectual stimulation, no meaningful social contact and minimal opportunities to engage in constructive activities.

For those detained in a HSA, outdoor time remains the only daily out-of-cell activity guaranteed by law. This is their time to socialize with each other

⁴²⁵ REEPPDA, Art. 54.

⁴²⁶ REEPPDA, Art. 214.

and shop from the prison store. As of 2021, inmates in all prisons had at least one and a half hours of outdoor time per day. There are prisoners who prefer to go outdoors on their own and others who do not go out at all, mostly due to interpersonal conflicts, or loss of desire or skills to socialize due to prolonged forced isolation. Solitary use of one's outdoor time may be imposed by the prison governor as well, as a security measure, even though there is no such legal provision.

A life prisoner from the Pleven Prison was subjected to additional security measures. These included solitary outdoor time, reduced from two hours to one, no access to facilities for physical activity and prohibition to use a telephone in the outdoor area, while there was no option for confidential calls in the corridor of the HSA. Due to these measures the prisoner filed a complaint for discrimination with the Pleven District Court in 2020. The prison administration argued before the court that the restrictions were placed on the prisoner due to information from the Ministry of the Interior, which is classified, but it did not present this information. The court took that as lack of justification or necessity to subject the applicant to less favorable treatment than other life prisoners. On that basis, the Court found that the applicant was subjected to direct discrimination on the ground of 'personal status'.

The Court held that both hypotheses were discriminatory - spending outdoor time in the small courtyard, without fitness equipment or no telephone, on one hand, and allowing telephone calls only in the small corridor, in the presence of a guard at all times, on the other. The discrimination stems from the prison administration's failure to provide the applicant with the same conditions which other prisoners serving that sentence have. The applicant was found to have been treated less favorably than any other prisoner in the same group was, had been or would be treated⁴²⁷.

The rest of the weekly schedule of life prisoners in the HSA varies by correctional institution.

In most places, life prisoners have access to the prison gym - a room with weights and a small number of other fitness equipment. The prisons in Belene, Bobov Dol and Sofia have such gyms within the HSA. The gym in the Sofia HSA is equipped with barbells, a Swedish wall, a boxing pear and a cycle ergometer, which was defunct at the time of the visit. Prisoners can use the gym three times a week for one hour. An interviewee from the Bobov Dol Prison said that life pris-

⁴²⁷ Decision No. 260203/23.09.2020 in case No. 23335/2020 of the Regional Court - Pleven.

oners were allowed to use the gym for one hour a day and that they had recently got a new „Gladiator” combined fitness machine. In Pleven, life prisoners have access to the prison gym for one and a half hours a week. The Varna Prison has a table tennis in its HSA. Life prisoners in the Burgas Prison are in the worst situation, as they are not provided with any time for indoor sports at all.

Inmates housed in the HSA can use the prison library once a week according to a schedule. In the Burgas and the Bobov Dol prisons, inmates complained about the limited book collection and the lack of up-to-date legal literature. The prisoners are visited once a week or less by representatives of various religious groups, mostly Christian denominations. In the corridors of some HSAs there are separate clubs for group activities - watching television, playing cards and backgammon, etc. In the Lovech Prison, a life prisoner said that he spends 2 hours a day, 4 days a week in the group club, where they make handmade items. Occasionally, life prisoners have other activities, such as literary contests, card tournaments and making decorations for holidays. In the Vratsa Prison life prisoners can meet and visit each other in their cells if they wish. During these visits all security measures are in place. If the prisoners want, they can take part in conversation meetings or the so-called “quiet games”⁴²⁸. For some time in 2020, a life prisoner from the Belene Prison, who had been isolated from the other prisoners in the prison, was given a computer to write a book and learn foreign languages. A life prisoner in Pleven complained that there was no opportunity for prisoners in the HSA to participate in educational courses or activities. He himself was keen to attend a computer literacy or language course. In the same prison one inmate was making model houses in his cell, which were then displayed in the prison administration's hallway and were available for purchase. Life prisoners from the Bobov Dol Prison's HSA explained that they were not included in any activities apart from using the gym. Two of them mentioned that they were learning foreign languages by themselves.

All activities outside the cells are held Monday to Friday. On weekends and holidays, life prisoners leave the cells for their outdoor time only.

The 2017 amendments to the EPPDA allowed for special regime prisoners sentenced to life imprisonment or life imprisonment without parole to work together with other inmates or to participate alongside them in educational, sporting and other activities. The prison governor can issue an order allowing their participation. This opportunity to mitigate the regime and provide access to a wider range of meaningful activities with other prisoners, including with those housed outside the HSA, is used extremely rarely and only for a few pris-

⁴²⁸ Vratsa Prison, *Annual Report 2020*, p. 14.

oners, usually allowing them to participate in one-off sporting competitions. We don't know of a single case of an inmate from HSAs involved in school education, although there are prisoners who wish to do so.

Work opportunities are also very limited and there are no known examples of life prisoners working at the prison workshops with other prisoners or life prisoners employed in the prison's utilities. The law allows life prisoners to work in specially designated areas under increased supervision and security, but such areas do not exist anywhere in the country. In the rare case when life prisoners are working, they do it in their cells. Our monitoring found that there are only four prisons where life prisoners living in HSAs are employed in paying positions.

In the Burgas Prison, life prisoners were hired by an external company, and their work involved filling small bottles with paint. Some inmates complained that this activity required them to be constantly bent over, causing them back pain. A life prisoner argued that it was not worth working because his money would be sequestered to pay off his debts, and the days he had worked could not legally be used to reduce his sentence. In the Varna Prison, the life prisoners on special regime produced items for decoupage. In Bobov Dol, an inmate was employed to make paper bags. This job had been set up with the help of the social work inspector specifically for this prisoner, because due to the seriousness of the crime he had committed he did not receive visits and was isolated from other prisoners. In 2020, three of the life prisoners in the Vratsa Prison worked in beehive production. Elsewhere, life prisoners volunteer to clean the corridors of the HSA.

Social work inspectors have individual working approaches to each life prisoner. They mostly aim at overcoming the disadvantages of prolonged prison stay and isolation, by providing individual counselling on domestic, social and personal issues, and "maintaining a normal living climate in the HSA, as well as a balance in the relations between the prisoners in the prison groups"⁴²⁹. According to the head of the social work department in the Burgas Prison, the main goal of his work with life prisoners was to reduce the intensity of aggression and conflict. It is clear that all these interventions are aimed at the needs and damages that have arisen as a result of the prison stay, and not the ones, which have led to the conviction itself.

Group correctional work with life prisoners in HSAs is rare. The annual reports of the penitentiary institutions show that in 2020, the Varna Prison organized a correctional program called „How to communicate better”, which was attended by 8 life prisoners. The Belene Prison set up a group called “Tol-

⁴²⁹ Vratsa Prison, *Annual Report 2020*, p. 72.

erance" with three life prisoners. The annual report of the Stara Zagora Prison in 2020 confesses to the difficulties encountered by social inspectors in their work in Bulgaria:

The Bulgarian penitentiary system does not have a practical model for dealing with [life prisoners], in the sense of treating persons with a sociopathic personality who are experiencing long-term isolation⁴³⁰.

Prisoners themselves often told us that they were left out of correctional activities and that they had rarely met the social inspectors.

Each life prisoner undergoes an annual assessment of the risk of harm and reoffence. Results, however, are not shared with the prisoners. One life prisoner who was appealing against the prison governor's refusal to commute his sentence to a lighter regime told us that after the changes in legislation he was able to get a copy of the refusal order for the first time. During the proceedings he had had the opportunity to see the assessment reports and descriptions given to him by the prison administration, which contained new and surprising information for him. It was again thanks to the hearing that for the first time he was able to see the risk assessment scale. Another life prisoner reported that he had lodged a complaint with the court, but the prison made him withdraw it, threatening to increase his risk factor in the assessment.

7.2.5 Effects of the extended stay in the HSA and mental illnesses

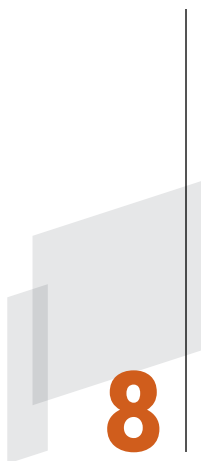
A significant proportion of life prisoners serving special regime sentences in the HSA have been diagnosed with mental illness. One interviewee said that he hears voices, he experiences episodes of rage and self-harm, and that he had cut his own ears during one of them. He was on antipsychotic therapy and received his medication from the guards. He had consulted a psychiatrist for the last time in 2020. Another inmate stated that he preferred to stay in the dark in his cell because he heard voices and was restless. He was on neuroleptic medication and said that he couldn't sleep without it. An inmate housed in the Lovech Prison HSA was visibly mentally disturbed. According to the guards, he was on therapy, but when he met with BHC researchers it was apparent that he was hallucinating, that he had persecutory delusions and was disoriented. An interviewee recounted that after he had injured himself, guards made him lie on the ground, handcuffed him, and beat him with a baton.

Many long-term life prisoners have clear mental illness symptoms, manifested in their antisocial behavior, depression, anger, episodes of aggression

⁴³⁰ Stara Zagora Prison, *Annual Report 2020*, p. 30.

and self-harm. The long-term isolation, the lack of regular engagement in meaningful activities and specialized psychological and psychiatric care contribute significantly to the development or exacerbation of mental health problems. Some of the prisoners who had spent many years in HSAs insisted that they preferred to remain under special regime in a private cell rather than to be reintegrated into the general prison population. A life prisoner from Belene had been transferred to a shared cell, but he failed to adapt, and was returned to the HSA at his own request. In some places, the prolonged isolation and the contact with a small circle of people (7-8, on average), without constructive activities to give meaning to everyday existence, had led to tension and conflicts among the life prisoners. Some of the inmates we interviewed had become so antisocial that they spent their outdoor time alone, because they did not even want to see other inmates.

Prisoners with mental health problems and illnesses usually have no contact with anyone outside the prison and receive no financial support. Their cells are more sparsely furnished (e.g. no TVs), they have poorer hygiene and are not involved in activities. In general, their prospects for change to a lighter regime, commutation or pardon and eventual release from prison are very low.



8 PRISONERS IN A SITUATION OF VULNERABILITY

Prison authorities must ensure the equal treatment and personal safety of all prisoners, particularly the most vulnerable, while taking into account their individual needs.

We can define prisoners in a situation of vulnerability as prisoners who, because of their characteristics, real or perceived, general social attitudes or conditions of detention, are at a higher risk than other prisoners of having their basic human rights violated⁴³¹.

Traditionally, people with disabilities, drug users, LGBTIQ people, members of ethnic minorities, women, minors and foreigners are considered vulnerable groups in detention. Our research shows that poor prisoners, prisoners who file complaints and initiate lawsuits to defend their violated rights, and prisoners convicted of child sexual abuse are also particularly vulnerable in Bulgaria.

Our monitoring and the cases we documented demonstrate that the Bulgarian penitentiary system has largely failed in its commitment to protect and promote the rights of prisoners with special needs and prisoners who are at increased risk of victimization and ill-treatment. The main shortcomings are the lack of adequate measures and programs to assist the various types of vulnerable groups, as well as the insufficient number of professional staff: social workers, psychologists, therapists, etc.

⁴³¹ Kanev, K. *Prisoners in a situation of vulnerability: A Handbook for National Preventive Mechanisms*. Sofia: BHC, 2021, p. 14, available at: https://www.antigone.it/upload2/uploads/docs/handbook_-_prisoners_in_a_situation_of_vulnerability.pdf. (In English.)

This chapter will examine the situation of the main groups of vulnerable prisoners and the problem of inter-prisoner violence. The circumstances of juveniles in detention are the subject of a separate chapter in this report.

8.1. Prisoners with disabilities

The penitentiary system does not meet the special needs of prisoners with physical, sensory, psychosocial and intellectual disabilities. This leads to their physical and social isolation, and their inability to participate fully in rehabilitation and other activities. It also puts them at a higher risk of violence and harassment. We can also include the seriously ill and elderly prisoners in this group.

There are several key measures that prisons are taking to attend to persons with disabilities. The accommodation of persons with disabilities is separated in special quarters or in the inpatient wing of the medical center, where they share the space with ill, drug-dependent and elderly prisoners who need medical attention. BHC visited a section for persons with disabilities in the CTPH Kremikovtsi. It was set up in the last of a series of old wooden shacks in the prison yard. Unlike the other ones, this one had a separate fenced yard that could be used throughout the day. However, the material conditions in the cells were extremely poor. CPT visited the CTPH Kremikovtsi in October 2021 and described them as “appalling”:

Especially as regards certain inmates (e.g., those who were HIV+ or those with disabilities), conditions in their barrack (Group 10) were appalling, with cold and wet damaged walls, floors and ceilings, broken beds, damaged bedding, a leaking roof and water pressure in the sanitary annexes being insufficient. It would be no exaggeration to call these conditions an affront to human dignity amounting to a violation of Article 3 of the European Convention of Human Rights⁴³².

The quarters of the sick and disabled in the Belene Prison (Group 6) are located next to the medical inpatient ward. Its location helps the prisoners' visits to the medical room, given that most of them take medication on a daily basis. The complaints of the inmates in this group were that, due to their disabilities or health condition, they were excluded from participating in work and

⁴³² European Committee for the Prevention of Torture, Inhumane and Degrading Treatment. Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022) 20, § 42. (In English)

meaningful activities, which could lead to a reduction in the length of their sentence. They were also unable to participate in sports activities.

Another form of separate accommodation of people with disabilities is the “preventive” isolation under Article 60 of EPPDA. Under that article, the prison governor is allowed to establish a separate ward for the accommodation of socially dangerous prisoners, prisoners suffering from alcoholism or drug addiction, persons with mental disorders, or vulnerable persons. The purpose of their separation is to guarantee their own safety, as well as the safety of others. Prisoners can be placed in these wards for a period of up to three months, which can be extended. The ward may be inside the HAS⁴³³. In 2018, 34 orders were issued under Article 60 of EPPDA⁴³⁴. People in a serious emotional and psychological condition at risk of self-harm and aggression often find themselves in preventive isolation. Many of them need specialized medical care and supervision that they cannot receive in prison, and the prolonged isolation may lead to deterioration.

There are no professional orderlies and carers in prisons and usually the inmates take on the daily care of disabled people and the seriously ill. For the most severe cases, the prison administration employs other prisoners (without paying them) as carers to assist disabled people in their daily domestic and hygienic needs: mobility assistance, feeding, bathing, laundry, etc. Carers are not specifically trained for this purpose. In some cases, they are unwilling to do this type of work, but a refusal to do so can have a negative impact on their situation in prison. An inmate from the Varna Prison explained that he was placed alone in an undersized cell with poor conditions as a punishment for refusing to care for another inmate, a 60-year-old man who had suffered a stroke and could not care for himself.

In general, prison administrators and medical staff assist persons with disabilities in appearing before the MDC and getting a disability pension.

None of the monitored penitentiaries, not even the newly built or renovated ones, meet the regulatory requirements for accessibility for people with physical disabilities and reduced mobility. The stairs are steep and difficult to use, there are no ramps, platforms or lifts, there are no hostels and bathrooms that are specially furnished and adapted to facilitate the movement and the use of wheelchairs, etc.

The Ombudsman, who is Bulgaria's NPM, also criticized the inaccessible environment of renovated institutions:

⁴³³ See chapter High security area.

⁴³⁴ GDEP, Annual Report 2018, p. 12.

The NPM found that the renovation of the prison hostel in the village of Razdelna does not take into account the requirements of Ordinance No. 4 from 1 July 2009 on the design, execution and maintenance of buildings in accordance with the requirements for an accessible environment for the population, including people with disabilities (in force since 14 July 2009, issued by the Ministry of Regional Development and Public Works, SG No. 54 of 14 July 2009, as amended by SG No. 54 of 15 July 2011). The NPM made a similar observation during its visit to the prison hostel in Debelt. It is evident that there is a systemic flaw in the implementation of the requirements of Article 45 of EPPDA ⁴³⁵.

Inaccessible environment can lead to humiliating treatment for people with disabilities. In the Pleven Prison the BHC researchers met a prisoner who had his right foot and his left leg, as well as all but a few fingers on his hands, amputated. He was placed in the medical center under the care of another inmate. It was expected of him to use crutches but he could not grip them well, especially with the right hand, which had lost all fingers. He had developed wounds in the armpits. The prison had a wheelchair, but it was only available upon express request. According to the prison paramedic, a person in that condition could not have his own wheelchair. The prisoner said that he only used the wheelchair when he visited the prison store once a month. Until a few months ago, he had been housed in a cell for life prisoners on the third floor. During this period another inmate was carrying him on his back to the medical center on the first floor and back. He had a chair in his room with a hole cut in the seat for a bucket he used for toileting. The threshold between the cell and the sanitary unit was sloped to allow a wheelchair to enter, but the space was too narrow to use the wheelchair inside. The sanitary unit had a squat toilet and no shower or hot water. The disabled inmate was bathed with buckets of water preheated in a kettle.

Places of detention do not have amenities and services suitable for people with sensory disabilities. A prisoner with severely impaired vision serving a sentence in the Stara Zagora Prison had serious difficulties in exercising his right to personal correspondence with relatives, NGOs and state institutions, while the prison prevented another prisoner from assisting him in reading and writing letters.

⁴³⁵ Ombudsman of the Republic of Bulgaria. *Report of the National Preventive Mechanism on an inspection carried out in the Lovech Prison*, p. 6, available at: https://www.ombudsman.bg/pictures/file/%D0%94%D0%BE%D0%BA%D0%BB%D0%B0%D0%B4%20%D0%92%D0%B0%D1%80%D0%BD%D0%B0%202017%D0%B3_.pdf.

A significant proportion of the inmates are people with psychosocial and mental health problems and disabilities. In an institutional environment without the necessary therapy and rehabilitation, they become particularly vulnerable to violence, self-harm and suicide.

Psychologists and psychiatrists have a key role in addressing the needs of prisoners with mental and psychiatric illnesses. Psychologists must assess the incoming prisoners to identify relevant risks and problems and refer them to a psychiatrist, if need be. They should also provide psychological counselling and crisis interventions. Psychiatrists should diagnose and treat people with mental illness. However, the penitentiary system does not employ enough professionals to meet these needs. The management of the Bobov Dol Prison stated that one of their main challenges is addressing psychopathic and sociopathic behavior of inmates and the high incidence of mental illnesses, including addictions. The penitentiaries have to solve medical problems without having the necessary expertise or capacity, they point out.

Some of the prisons visited in the course of the study have only one psychologist, which is extremely insufficient. These include the CTPH Kremikovtzi, which had 308 prisoners as of March 2021 (the time of the visit), the Debelt Prison Hostel with 353 prisoners as of 16 July 2021 and the Vratsa Prison with 413 prisoners as of October 2021. But the CTPH Cherna Gora had no psychologist on staff at all, and the Stara Zagora Prison psychologist visited the hostel only once a week. Prison psychologists attend to prison staff as well as to prisoners, which makes their work even busier.

No prison has a psychiatrist on staff. Prisons are either visited by external specialists, or are taken out for examination.

In their annual reports, penitentiary institutions regularly highlight the problem of the psychological and psychiatric care of prisoners.

Annual report of the GDEP for 2018:

Psychologists are facing [...] increased workload. The small number of psychologists reduces the effectiveness and efficiency of the work. The lack of a dedicated psychiatrist makes the work with those suffering from mental illness even more difficult. As the mental state of the prisoners deteriorates, the tension in the hostels increases because of their aggressive and/or self-harming behavior⁴³⁶.

⁴³⁶ GDEP, *Annual Report 2018*, p. 47.

Annual report of the Stara Zagora Prison for 2020:

The Stara Zagora Prison still does not have a psychiatrist [...] This makes our work extremely difficult. More and more often the head of the medical center [...] fails to secure a consultation with a specialist for the mentally ill prisoners and this reflects on both the staff and the prisoners who are living with them. We do not have mechanisms to place inmates who have neurological symptoms, i.e., severe seizures, in a specialized hospital facility. At the same time, [the inmate in need of medical attention] cannot be brought in the inpatient ward due to the lack of staff during the night⁴³⁷.

With their consent, prisoners can be sent for treatment at the psychiatric ward of the Lovech Prison hospital. In 2021, 187 patients were treated in the ward for an average of 79 days⁴³⁸. An inmate who was treated in the Lovech Hospital for auditory hallucinations said that he was isolated for 14 days. In his cell there was a camera installed. He did not know what medication he was given, nor what his diagnosis was. In his words, the treatment caused his arms to twist and his eyes to roll.

Places of detention have methodological guidelines for the prevention of suicide and self-harm. The guidelines outline three groups of preventive measures: 1. Prevention of factors increasing risk; 2. Early diagnosis and treatment of mental disorders and crisis situations, identification of persons at a medium and high risk of suicide and self-harm; 3. Rehabilitation of persons who have committed self-harm. BHC was told that in order to fulfill these guidelines Vratsa Prison maintained a register of newly admitted persons prone to suicidal behavior and prisoners with addictions. There was also a list of persons at risk of engaging in risky behavior, as well as brief methodological guidelines on the signs of suicide and practical first aid instructions. The guard staff monitored the inmates daily, communicated with them and reported any symptoms.

Despite these efforts, the statistics on self-harm, attempted and actual suicides in detention are alarming. Between 2017 and 2021, the absolute number of incidents varies, but overall, there appears to be an increase in these types of incidents, especially given the continued downward trend in the prison population.

⁴³⁷ Stara Zagora Prison, Annual Report 2020, p. 53–54.

⁴³⁸ GDEP, *Annual Report 2021*, p. 56.

TABLE 15. Number of recorded self-inflicted injuries, attempted suicides and suicides in places of detention (prisons and pre-trial detention facilities) between 2017 and 2021.

	2017	2018	2019	2020	2021
Self-inflicted injuries	138	178	179	139	159
Attempted suicides	(N/A)	18	31	32	(N/A)
Suicides	2	3	3	1	4

Source: Annual reports of GDEP for 2017–2021 and Council of Europe's Annual Penal Statistics on Prison Populations 2018–2021.

A large number of self-harming prisoners have either drug addiction or mental illness and need appropriate psychological and psychiatric care. However, their actions are often interpreted by the penitentiary authorities as demonstrative, manipulative and inappropriate, and as a violation of the internal rules. This approach risks worsening the situation of the mentally ill. Mental illness also affects a significant proportion of life prisoners serving sentences in solitary confinement in high security areas⁴³⁹.

In 2020, there was an increase in the number and severity of cases of self-harm in the Bobov Dol Prison. The institution reported 100 psychological crisis interventions, mostly related to incidents of self-harm. This comprises nearly 40% of all 259 crisis interventions recorded in the penitentiary system for the year⁴⁴⁰.

There were one hundred crisis interventions in cases of deliberate non-suicidal harm during the year. The cases include refusal of food, refusal of treatment, self-harm through stitching of the mouth, eyes, injuries of the skin of the limbs and torso, preparation for self-hanging, attempts and threats for self-poisoning through medications or detergents, ingestion of metal objects - parts of spoons, pieces of iron, wire, nail clippers, shaving razors, or non-metal objects - lighters, pieces of plaster, medicines, batteries, etc. Other cases include behavioral changes and nervous breakdowns, demonstratively confrontational behavior involving the removal of clothing, anger outbursts and hostility towards the staff, verbal threats and intimidation of the staff, inappropriate behavior following drug withdrawal crises, declarations of intent to commit suicide, etc.⁴⁴¹.

⁴³⁹ See chapter High security area, subtopic Life prisoners.

⁴⁴⁰ GDEP, Annual Report 2020, p. 42.

⁴⁴¹ Bobov Dol Prison, Annual Report 2020, p. 44–45.

Four self-harm incidents in the Bobov Dol Prison resulted in death⁴⁴². According to inmates with whom the BHC spoke, the wave of self-harm was a result of abruptly cutting of prisoners' access to drugs or drug addiction medications and the prison administration's neglect of the problems. One case involved a drug-addicted man serving a sentence at Bobov Dol, who allegedly ingested a so-called "star" after the prison stopped his Clonarex treatment on suspicion that he was selling it. A „star" is a ball of sharp iron, in this case pieces of wire mesh held together by an elastic band, which is wrapped in bread and swallowed. The "star" then disintegrates in the stomach and injures the internal organs. A few days later he was taken to the medical center, but soon died from his injuries.

8.2. Prisoners using drugs

According to prison staff, the number of drug users among inmates in Bulgaria is high and it's constantly on the rise. According to an analysis of the prison community in Pleven for the first half of 2021:

The share [of people with drug addiction] has increased and is now around 15% of the total prison population, ranging from 20 to 45 people. About 80 prisoners per year suffer from drug addiction. In 2020 the Pleven Prison had 78 inmates addicted to drugs or using psycho-active substances⁴⁴³.

In the Sofia Prison, there was also an increase in the number prisoners entering the methadone program and prisoners experiencing withdrawal symptoms⁴⁴⁴. According to the management of the women's prison in Sliven, every third female inmate has a drug or alcohol addiction. BHC was told of a case of a young woman, 5 weeks pregnant, who had attempted to smuggle methadone into the prison. The rising number of drug users in prisons is also reflected in the statistics of the National Focal Point for Drugs and Drug Addiction as well. Its numbers are based on information on the number of people who sought treatment for drug use in the medical centers of 11 prisons. In 2021, 503 prisoners sought treatment, which is the highest number of cases since the center has been collecting data on this issue⁴⁴⁵. In 2021, prisoners were most fre-

⁴⁴² Ibid., p. 46.

⁴⁴³ Pleven Prison, Analysis of the prison community in the Pleven Prison for the period 01.01.2021 – 01.07.2021, p. 21.

⁴⁴⁴ Sofia Prison. *Annual Report 2020*, p. 14.

⁴⁴⁵ National Focal Point on Drugs and Drug Addiction. *Annual Report on Drugs and Drug Addiction in Bulgaria*, 2021, p. 155, available at: <https://www.nfp-drugs.bg/wp-content/uploads/2022/12/NDR-2021.pdf>.

quently treated for methamphetamine (22.1%), heroin (20%), cannabis (13.9%), and amphetamine (13.5%) abuse. The number of those seeking help for heroin use, which is traditionally the highest, has decreased recently, while that of stimulant users (methamphetamine and amphetamine) is on the rise⁴⁴⁶.

There has also been an increase in the share of prisoners with positive urine drug tests. These are done at the discretion of the prison administration. In 2021, the share of positive tests was 23.3%, compared to 14.0% in 2020 and 8.8% in 2019⁴⁴⁷. The most frequently detected drugs were cannabis, amphetamines, and methamphetamines⁴⁴⁸.

The prison system views the issue of increasing numbers of drug users and prisoners seeking medical help related to drug use primarily as a challenge to internal peace and discipline. The main efforts are focused on identifying and punishing drug users. Inmate drug testing has more than tripled in the past few years, from 250 tests in 2018 to 881 tests in 2021⁴⁴⁹. According to some inmates, prison officials help with the supply of drugs. After a police operation in 2020, the paramedic of the Varna Prison was fired for possessing unauthorized drugs with the intent to sell them⁴⁵⁰.

At the same time, drug treatment, rehabilitation and harm reduction activities in prisons are increasingly scarce or completely absent. The main perception among prisoners is that prisoners addicted to drugs do not receive the necessary psychosocial support. The „Short-term program for minimizing the harm of drug use“ is the only specialized program to treat drug addiction in prisons. The visits confirmed that in many places the program was not implemented due to the lack of trained staff or their heavy workload. In 2020, the program was implemented only once – in the Lovech Prison, and in 2021 a total of 6 therapy groups with a total of 40 participants were organized in the prisons in Belene, Burgas, Lovech and Sliven.

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid., p. 154.

⁴⁴⁸ Ibid., p. 155.

⁴⁴⁹ Ibid., p. 154.

⁴⁵⁰ Varna Prison, *Annual Report 2020*, p. 25.

TABLE 16. Implementation of short-term programs for drug-dependent prisoners in Bulgarian prisons between 2015 and 2021⁴⁵¹

	2015	2016	2017	2018	2019	2020	2021
Programs (groups)	9	5	14	12	6	1	6
Number of prisoners	99	54	146	87	38	12	40

Source: National Focal Point for Drugs and Drug Addiction

Prison staff said that these types of programs would be more effective if they were run by external organizations as it was difficult to establish a trusting relationship between prisoners and prison staff. One such program - "Building and promoting social skills of offenders with problematic drug use" - was implemented in 2018 in Varna in cooperation with the NGO Altruist, but that is a rare instance.

According to our research, in 2021 drug-dependent prisoners in the Sofia, Pazardzhik and Stara Zagora prisons had access to opioid substitution treatment with methadone. The treatment was offered by external facilities. No other prisons offered this type of treatment. Thus, inmates who were on such therapy before conviction had to inevitably interrupt it, at a serious risk for their health.

The Sofia Prison offers a methadone program in cooperation with a private medical outpatient facility. According to the prison's medical team, as of October 2021, 16 inmates were part of the program. One of them told us that the monthly fee for the program was 200 BGN. Another inmate said that he had enrolled in the program for a fee of 100 BGN per month, but since he did not have the money, he struck a deal to pay the fees after serving his sentence. The methadone is administered by the medical staff of the program and once a week a psychiatrist visits the patients.

At the time of our visit, the Pazardzhik Prison offered a methadone program and two or three inmates were enrolled in it. Approximately the same number of prisoners were enrolled in the methadone program in Stara Zagora. It was not clear whether and how inmates may access the treatment in prison if they had not been enrolled in such treatment prior to their detention.

Methadone programs at state and municipal mental health facilities are free, but usually they do not have the capacity to attend to prisoners.

⁴⁵¹ National Focal Point on Drugs and Drug Addiction, *Annual Report on Drugs and Drug Addiction in Bulgaria*, 2021, p. 158.

According to the medical staff at the Stara Zagora Prison, the drug-addicted prisoners who are not on methadone therapy are subjected to rapid detoxification or are sent to the Sofia Prison Hospital. After that, they consult a psychiatrist who may prescribe a therapy with neuroleptics or other tranquilizers. The most used medications are Clonarex, Xanax, Neurotope, Convulex, and Depakine. At the time of our visit to the Stara Zagora Prison and its adjacent hostels, 9 inmates were on therapy. We heard reports that prisoners who took neuroleptics would develop a dependence and when their dosage was lowered, they had issues, mostly panic attacks.

According to the physician at the Sofia Prison, about 40 prisoners on Clonarex had manic-depressive, or bipolar disorder. Clonarex is also administered in Bobov Dol – at the time of the BHC visit, about 20 prisoners were on that medication. The treatment is prescribed and supervised by a psychiatrist who visits the prison once a week. The cost of a pack of 30 tablets is around BGN 15. The medication is purchased at the inmates' expense and the money is deducted from their personal account at the prison.

The psychiatric ward of the Lovech Prison hospital treats drug-addicted prisoners from the whole country for whom the court has ordered compulsory medical measures, as well as prisoners who have consented to be treated in this hospital. In 2021, 22 inmates were undergoing compulsory treatment for drug dependency⁴⁵².

Inmates in Pleven complained about the lack of therapy for drug-addicted prisoners. A representative of the medical team of the prison confirmed this. The bigger problem seems to be the lack of access to psychiatric care. The annual report of the Sofia Prison for 2020 also mentions this issue, stating that the lack of systematic psychiatric care in the prison creates extreme difficulties and problems with the execution of sentences⁴⁵³.

Because drug use in prisons is prohibited by law, prison authorities do not allow programs for the supply of needles, syringes and other equipment to safely inject drugs. The lack of free access to these supplies creates conditions for the spread of HIV and other blood-borne viruses. An inmate from the Bobov Dol Prison told us that 50 people used the same needle and shared it between the floors, using a so-called „elevator“ (lowering an item tied with a rope from a window on one floor to the floor below). According to him, a quarter of a gram of heroin in this prison was worth 5 packs of cigarettes.

⁴⁵² National Focal Point on Drugs and Drug Addiction, *Annual Report on Drugs and Drug Addiction in Bulgaria*, 2021, p. 156.

⁴⁵³ Sofia Prison, *Annual Report 2020*, p. 28.

Drug-addicted prisoners are at high risk of violence and other forms of abuse. We came across the case of a young man with heroin addiction who said that he endured daily abuse from the other prisoners in his cell who were subjugating him. He had to wash their clothes and bedding, clean their cell and the corridor. He was forced to provide them with sexual favors, which he allegedly refused and as a result was constantly physically abused. His mattress was on the floor, and he had no locker or personal belongings because whatever was brought to him from the outside was taken by other prisoners. He received a monthly money transfer from his mother, but he claimed that he could not use it because the others forced him to shop for them. He complained to the guards, but they physically abused him too. As a result, after another argument with the guards, he was classified as a self-injurious prisoner and sent to the inpatient ward. There he was prescribed Leponex and was tied by the hands and feet for a week, without even being released to visit the toilet.

8.3. Foreign nationals

Foreign prisoners face a number of challenges in Bulgaria. The main ones involve the language barrier, the difficulty to make contact with the outside world, the unequal access to education and opportunities to change the prison regime, as well as problems with health insurance and access to medical care.

Unlike elsewhere in Europe, foreign nationals represent only a small share of the total prison population in Bulgaria, about 2%. Male foreigners sentenced to imprisonment serve their sentences in the Sofia Prison and its hostels. Those who have residence are assigned to a prison according to their registered address. At the time of our visit to the Sofia Prison in October 2021, 102 foreign nationals were serving sentences there. Convicted female foreign citizens serve their sentences in the only prison for women in Bulgaria, Sliven, and as of 30 June 2021 their number was 3. The majority of sentences were for drug trafficking and illegal crossing of the state border.

The language barrier faced by foreign prisoners is a serious problem that has consequences on every aspect of their imprisonment. The law doesn't provide for any translation or interpretation, and to explain the rules to newcomers, prison authorities do not rely on professional interpreters, but on other inmates who are fluent. Occasionally, if the inmate is only proficient in a rare language, several layers of interpretation are involved. However, the documents that prisoners have to sign are in Bulgarian. A foreign prisoner told us that he refused to sign documents which he doesn't understand, and he was accused of being uncooperative. There are also communication issues with the guards, because foreigners may misinterpret questions and orders, which

is perceived as disobedience. Such situations can sometimes escalate to the use of force and instruments of restraint.

During the BHC visit in Sliven, researchers met an incarcerated French-speaking foreign national who was very far along in her pregnancy. She was placed in the nursery of the prison with another pregnant woman, but due to the language barrier she had great difficulty communicating with her, as well as with the prison staff and medical team. She felt lonely and worried about the delivery and the fate of her child.

At the time of the BHC visit to the Sofia Prison, the foreign nationals were housed on two floors in a building separate from the main building. The area was not overcrowded. Some cells had been renovated, while others were still in a very poor condition, especially the floors. The furniture everywhere was in a very bad condition. The main advantage of foreigners' cells is that, usually, inmates are allowed to use hotplates to prepare food. During one of the visits to the prison, Muslim inmates in the foreigners' group complained that their hotplates had been taken away (some had been taken away by the administration, while other inmates had been forced to move the hotplates to the shared kitchen). Given that the beginning of Ramadan was approaching, the lack of a hotplate was a serious problem for these prisoners, as they could only eat before sunrise and after sunset and they wanted to be able to prepare their food in the evening.

Communicating with people outside prison is a particular challenge for foreign inmates. The cost of calling abroad from prison is very high and most of them could not afford it. During the COVID-19 pandemic, due to the restrictions on visits, the option of video calls over the internet was introduced. According to the staff of the Sofia Prison, prisoners were still allowed to do so in 2021. In Sliven, foreign prisoners could skype their relatives even before the pandemic. Another benefit foreigners could make use of is that they were allowed to receive parcels from abroad. Shipments from outside the EU, however, are subject to customs clearance, which prisoners cannot be present for. Some foreigners complained that they are less likely to receive rewards such as extended visits and home leave, because they were not registered in Bulgaria.

By law, all prisoners are medically insured from the moment of their detention. According to the GDEP, however, unregistered foreigners who have not been issued a personal ID number from the state, cannot be registered for full medical coverage in the IT system of the National Revenue Agency⁴⁵⁴. This raises the issue of their access to healthcare outside the penitentiaries, whose medical services are extremely limited. Furthermore, it is not clear whether and

⁴⁵⁴ Information received by BHC under the Access to Public Information Act from the GDEP by Decision No. ЛІ-4246/7.10.2020.

how foreign prisoners can access additional services outside the basic health coverage, which Bulgarian nationals can do for free. One such service is the HIV treatment, and in the past, there has been a case of a Turkish national left without treatment.

Another issue for foreign prisoners is the inability to procure certain medicines, which the penitentiaries expect prisoners' relatives to buy. Foreigners usually do not have any family in Bulgaria.

In 2020, the BHC followed the case of a Venezuelan woman serving a prison sentence in Bulgaria who had cervical cancer. Her disease was detected in 2019 at a very advanced stage and only when she was admitted as an emergency to the municipal hospital in Sliven. This happened despite the fact that, according to her own words and the testimonies of other inmates, she had been in pain for a year and had asked to see a specialist. After her transfer from the women's prison in Sliven to the Sofia Hospital, it was another four months before her treatment began. One reason for the delay was that she could not afford the cost of an expensive diagnostic imaging needed to determine the appropriate type of therapy for her illness. It was ultimately paid for by a third party and the treatment began, but the woman didn't recover and died in April 2020.

Foreigners are allowed to work but cannot attend school. At one point, an inmate taught a Bulgarian language course for foreigners, but it was discontinued after the change in the prison management. It was not available at the time of our visit. A prisoner told us that for the past 5 years that he had been serving his sentence, the prison didn't provide any professional qualification courses.

Foreign prisoners also complained of unequal treatment with regard to their opportunities to get early release and regime commutation.

8.4. Ethnic minorities

As a reflection and continuation of the widespread racism towards the Roma community in Bulgaria, Roma prisoners are subjected to ill-treatment and various discriminatory attitudes and practices.

The Roma minority is drastically overrepresented in prisons. While, in the 2021 census, 4.4% of respondents self-identified as Roma, a BHC survey of prisoners sentenced that year found that 42% of them self-identified as Roma⁴⁵⁵. Thus, the proportion of incarcerated Roma people is nearly ten times higher than their share in the population.

⁴⁵⁵ Kanev, K. *The Problems with the Equal Treatment of Accused and Defendants in Pretrial Proceedings in Bulgaria*, Sofia: BHC, 2022, p. 13, available at: <https://prisonreform.bg/wp-content/uploads/2022/11/2022-kanev-problems-with-the-equal-treatment-of-accused-persons-in-pre-trial-proceedings-in-bulgaria.pdf>. (In English)

Staff at some of the prison facilities we visited provided statistics on the distribution of inmates by ethnicity based on self-identification. The data presented below is valid for various dates in 2021.

TABLE 17. Distribution of prisoners by ethnicity in Burgas, Sliven and Sofia prisons

	Ethnic Bulgarians	Roma	Ethnic Turkish	Other
Burgas Prison	37%	53%	10%	0%
Sliven Prison	53%	37%	8%	1%
Sofia Prison	56%	35%	1%	8%

Source: data from 2021 provided to the researchers during visits to Burgas, Sliven and Sofia

Elsewhere, staff did not have data, but they estimated that Roma were half or more of all prisoners. Staff at the JCFB told us that at the time of our visit, nearly 80% of the boys detained in the facility were Roma.

The fact that Roma are overrepresented in prisons, however, does not initiate a debate about discrimination, socio-economic disadvantage, educational segregation and other forms of their unequal treatment in Bulgaria; it mostly serves to reinforce prejudices against them.

While we do not have data on prisoner distribution by ethnicity and type of prison facility, it is our observation that the majority of Roma prisoners serve in the main prison buildings and closed-type facilities. Conditions there tend to be worse, with more restrictive regimes and fewer job opportunities which lower the chance for reduction of sentences. There are also more Roma people among the repeat offenders: this is also the case in the special repeat offenders' group in Sliven. Asked about the criteria by which he was assigned to a specific prison group, a Roma prisoner in Burgas told us that he was in the Roma group, the largest group, also known as "the group of the inconvenient".

Prisoners are of the opinion that ethnic Bulgarians are preferred for jobs to the Roma, even if the former have just arrived in the prison. Inmates in Sliven complained of ethnic segregation when it comes to the allocation of work in the production workshops of the prison. Roma women worked mainly in the „Decoration" workshop, which was also called the „Gypsy workshop". The working conditions there were very poor: the workroom was dark, there was no ventilation and the temperature on the day of the BHC visit in August 2021 was very high. The women workers were not provided with refreshments and the sanitary facilities were in poor condition – dirty and leaking. The floor was concrete and could not be disinfected. There was no lighting in the workshop.

In this workshop, norms were more difficult to meet, which led to lower wages. A worker there said that her last gross salary was around BGN 50. Another inmate showed a pay slip for a previous month, for BGN 47.51 gross. She paid BGN 4.47 in tax, BGN 19 was deducted because of distraint and the net amount she received was BGN 23.76. The other workshop was the „Household sponges” workshop known as the „Bulgarian Workshop”. Workers there enjoyed better pay and working conditions.

According to prison annual reports, there are no conflicts between prisoners on ethnic grounds. Contrary to this, during our visits we received testimonies from Roma prisoners about harassment by Bulgarians in one of the groups in the Debelt Prison Hostel. Roma who were victimized were most often also extremely poor, which puts them at the bottom of the prison hierarchy. Prisoners also mentioned instances of violence on behalf of the guards, accompanied by ethnic slurs.

Some prisons have specialized correctional programs to promote tolerance that aim to prevent discrimination and change attitudes towards Roma.

8.5. LGBTIQ

Observations by international human rights bodies indicate that lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) prisoners are disproportionately subjected to sexual, physical and psychological abuse and discrimination when compared to other prisoners, because they do not conform to socially constructed expectations related to gender and/or gender identity. This calls for the introduction of special protection measures and non-discrimination policies, as well as for staff training.

In Bulgaria, neither the EPPDA nor penal enforcement strategies, programs or trainings take into account the presence and vulnerability of LGBTIQ people in prisons. Prison authorities discuss homosexual prisoners primarily in terms of their presence as a distinct group within the prison subculture.

The testimonies of prisoners collected during our work confirm that LGBTIQ people in prison are victims of various forms of harassment and sexual abuse by staff and other prisoners. Transgender people are in a particularly dire situation. Prisoners are allocated to a female or male prison entirely based on the gender indicated on their ID card. This is a serious problem for trans people because, unless they have undergone a gender reassignment procedure approved by the court, their gender identity and associated needs and safety requirements are not taken into account when they are placed in prison. For example, a trans woman who was housed in a male prison said that she was physically abused by guards and inmates, and that a particular guard

blackmailed her into sexually pleasuring him, under the threat of violence. She said that during a previous sentence her hair was cut, which led to a severe deterioration of her mental state and a suicide attempt.

Prisoners from the Plovdiv Prison said that homosexual inmates are poorer and are therefore forced to perform sex work. The BHC was told that they become the "property" of wealthier prisoners.

8.6. Poor prisoners

Prisoners who do not work for pay or receive financial support from outside are particularly vulnerable to various forms of abuse and violence. These people have various backgrounds. Some are prisoners with long or life sentences whose relatives have died or have become permanently disinterested in them. Others come from very poor families and their relatives can neither send money nor travel to the prison. Some have no family. The third group of poor prisoners comprises of those with mental health problems, whom the prison system has no policies to support.

It is our observation that a significant number of poor prisoners become dependent on other prisoners and have to perform various services in exchange for buying goods from the prison store. At the CTPH Atlant in Troyan, BHC researchers spoke to a poor prisoner who had no contact with his family, nobody visited him and he didn't receive any food parcels. He said that in order to get cigarettes, coffee and other necessities, he offered laundry, cleaning and sexual services to other inmates. He also complained about multiple instances of violence by the guards and other inmates. An inmate from the Vratsa Prison said that there were several people in his group who had no sources of income, as they didn't work nor did they receive money from their relatives. They relied on the prison and other prisoners to get some goods in exchange for washing and cleaning services. In Pleven, we were told that a piece of bread can be worth two cigarettes. In the OTHP Sliven the BHC researchers were given evidence of the systematic psychological abuse of poor prisoners, particularly a younger prisoner with a slight intellectual disability; she was subjected to insults, threats and exploitation to perform laundry and cleaning services.

Some prisoners rely on people and religious organizations outside prison for financial help or to buy them certain necessities. We met a prisoner from the Burgas Prison who was in an extremely difficult financial situation. He said that he was last given clothes, underwear and socks as a donation by an external organization in 2017, but he currently had only two T-shirts and had no underwear or socks. He didn't have a toothbrush or toothpaste either and he had not received toilet paper for five years. The group's social inspector gave

him razors to shave. Another inmate from the Burgas Prison said: "I have only one set of winter clothes and when I wash them, I am left without any clothes. There are no winter shoes in the warehouse either, now I am wearing shoes that get wet [...] I collect cigarette butts from the ashtrays and beg other prisoners for food, paper and other supplies."

Prison authorities do very little to alleviate the situation of the poorest prisoners. Apart from soap, which all prisoners are entitled to monthly, the administration provides limited hygiene products to those prisoners who have not received money or parcels from their relatives for more than six months. Some prisons give out clothes that have been donated to them.

8.7. Violence between prisoners

One of the basic duties of prison authorities is to ensure the personal safety of prisoners, including by protecting them from physical, sexual and mental abuse by other inmates. Failure to make sufficient efforts to prevent inter-prisoner violence can make the state liable for torture, inhuman or degrading treatment.

The long-standing inaction against the high levels of inter-prisoner violence in Bulgaria is one of the main factors that lead to the public statement of the CPI in 2015. The information we collected in the course of our work leads us to believe that more than five years after that statement, the levels of inter-prisoner violence remain critically high. For example, prison disciplinary practices reveal that the leading cause of inmate sanctions is the use of physical and psychological violence. Inter-prisoner violence is also the main cause of recorded injuries in prisons. This is information from the quarterly reports of GDEP on the cases recorded in the Register of Injuries for the period between February 2017 and March 2021. Each of these reports reaches an identical conclusion, namely that "[o]ne of the main problems in prisons is inter-prisoner violence" and that "[m]ost cases of injuries occur because of physical altercations"⁴⁵⁶.

The most numerous complaints of inter-prisoner violence, harassment and exploitation came from the Bobov Dol, Sofia and Plovdiv prisons, as well as from the closed-type hostels Atlant and Debelt. All of these institutions are closed-type facilities with many overcrowded or close to overcrowded cells. The prisoners spend most of their time in the cells due to the limited opportunities for work and other re-socialization activities. The GDEP reports about injuries also recognize the correlation between the number of inmates per dormitory and violence rates:

⁴⁵⁶ Information received by BHC under the Access to Public Information Act from GDEP by Decision No1902/2 from 08.06.2021.

One of the causes of physical altercations is the large number of inmates housed in a single dormitory, especially in large-capacity prisons such as Sofia, Varna, Plovdiv and Burgas⁴⁵⁷.

Other causes of inter-prisoner violence cited by the GDEP include disputes about gambling, services that prisoners do for each other, drugs, behavioral problems, etc.⁴⁵⁸. According to the management of the Bobov Dol Prison, every two weeks there is a case of inter-prisoner violence related to debts, gambling, drug use or alcohol production. According to the staff in Sliven, the prison experiences problems with the so-called toxic points - in certain groups, especially in Sliven and Ramanusha open-type hostels, there is constant tension between different groups of female prisoners, including confrontation, psychological harassment, physical violence (acts of jealousy, rivalry and fights for leadership). Inmates we spoke to in the Pazardzhik Prison added that there were people with mental illnesses who had sleep problems, possibly hallucinations. They disturbed others in the cell, especially at night, which lead to physical violence against them in certain cases.

As we mentioned earlier, prisoners with mental health problems, drug users, LGBTIQ people, Roma and poor prisoners are highly vulnerable to violence and other forms of abuse. Some of the worst cases of abuse reported to us involved prisoners with multiple characteristics that make them vulnerable. Violence against these people is systematic and usually includes humiliation, coercion to do things such as cleaning and laundry, and sexual abuse.

One case we encountered was of a young man serving a sentence in a closed-type institution. He is Roma and from a very poor family who are unable to visit him and send him money. He told us that he was systematically abused by another prisoner who beat him, insulted him, took his food and forced him to give him intimate massages. The prisoner had filed complaints with the management, which had not been addressed. The management saw him only after he had injured himself and, in his words, he was beaten by them as well.

Prisoners serving sentences for sexual offences against children are also at increased risk of violence. There were two cases of rape of such prisoners, both of which date back to 2021 and happened in the Sofia Prison. The first case involves an inmate convicted of rape of a child, who alleged that while undergoing treatment in the Sofia Prison hospital he was beaten by a guard and inmate orderlies, and that he was sexually assaulted by another inmate. The victim suffered from many psychological, intellectual and behavioral problems.

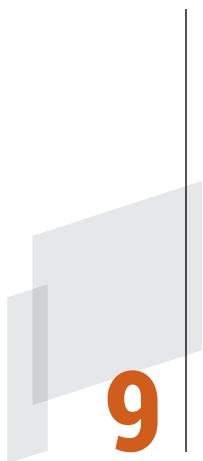
⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

The second case is documented in the CPT's report from their visit to the Sofia Prison in October 2021⁴⁵⁹. It concerned the rape of a detainee remanded on a charge of sexual offence against a child. According to the description in the report, the rape was committed by two inmates in the bathroom of the cell in the reception wing where the victim was initially housed. The incident is believed to have happened on the day the victim was placed in the reception wing after a guard "introduced" the victim to the other inmates in the cell, naming the crime for which he was being held.

Group accommodation is always associated with the risk of abuse, especially sexual abuse. In prisons and in close-type hostels, cells remain locked and unsupervised by the prison staff between 8:00 p.m. and 6:00 a.m. It is rare for cells to be equipped with bells or panic buttons to alert the guard staff in case of emergency. Panic buttons have been installed in the Debelt Prison Hostel. When a button is activated, a light corresponding to the number of the cell flashes in the guards' room on the floor. Unfortunately, when designing and constructing new prison facilities the state failed to introduce one of the most effective measures for the prevention of inter-prisoner violence: the provision of individual sleeping quarters for each prisoner. The measures currently available to prevent and deal with inter-prisoner violence are as follows: an initial risk assessment for the placement in a suitable group and cell; "preventive" isolation under Article 60 of the EPPDA in a ward or cell for vulnerable prisoners; increased monitoring; transfer from one cell to another when conflicts arise; disciplinary sanctions for offenders. We heard complaints that some social work inspectors do not respond to prisoners' requests for removal from cells when they claim to have been assaulted.

⁴⁵⁹ European Committee for the Prevention of Torture, Inhumane and Degrading Treatment, Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 13 October 2021, CPT/Inf (2022) 20, § 38 and footnote 55. (In English.)



JUVENILE PRISONERS

Taking into account that persons under the age of 18 have not yet reached their full emotional and intellectual maturity, criminal law has special provisions for the treatment of juveniles in detention facilities, with an emphasis on their education and faster re-socialization.

In Bulgaria, there are formally two correctional facilities for minors: the Juvenile Correctional Facility for Girls (JCFG) at the Sliven Prison and the Juvenile Correctional Facility for Boys (JCFB) at the Vratsa Prison. In practice, however, there is no correctional facility for girls. Over the last decade, the average annual number of girls detained in the correctional facility has never exceeded one, and the floor of the building in the yard of the Sliven Prison, allocated for the correctional facility, has been given for permanent use to the Sliven open-type hostel. Should there be a juvenile detainee, she cohabits with the adult women in the dormitory. Although this violates the principle of separating minors from adults, the alternative of the juvenile serving her sentence alone would also be unacceptable. During our visit in Sliven in August 2021, there were no underage girls in detention.

The conditions under which boys in Bulgaria serve a custodial sentence were overhauled between 2016 and 2018. First, in 2016, the only correction facility for boys, which had until this point been independent, was transferred under the authority of the Vratsa Prison. In 2018, it was physically moved from the town of Boychinovtsi to a building adjacent to the prison. The reform, which also included other legislative, administrative and infrastructural changes, was triggered by the revelation of numerous flagrant violations of the rights of imprisoned juveniles: violence, widespread disciplinary isolation, uncontrolled monitoring of telephone calls, lack of channels for complaints to external in-

stitutions and poor material conditions⁴⁶⁰. The violations were uncovered and made public after inspections by the BHC, the Ministry of Justice and the CPT. Along with these changes, over the last ten years there has been a significant reduction in the number of boys entering the correctional facility – from 124 in 2011⁴⁶¹ to 51 in 2020⁴⁶². These developments have generally led to the improvement of conditions for boys in detention.

On the day of the BHC visit in October 2021, the JCFB housed 18 boys between the ages of 14 and 18, 16 of which were convicted and two were remanded in pre-trial detention. The total number of new admissions for the previous year was 51, including 16 remanded in pre-trial detention, 19 remanded during their trial and 16 convicted⁴⁶³. The majority of juveniles were sent to the correctional facility for theft and robbery; the remainder were held primarily for crimes against the person and sexual offences. Over 80% of the juveniles were Roma, from families at the bottom of the social ladder, often with a father in prison and a mother working abroad. The staff of the JCFB consists of 11 educators, one psychologist and guards. The high number of educators implies an individual approach in working with juveniles.

The correctional facility is in the yard of the Vratsa Prison, but it has a separate fence and entrance, which does not allow for contact with adult prisoners. It consists of three buildings. The hostels are in the first building, the school is in the second and the third one is a sports hall. There is a separate outdoor area between the buildings. They are old, but they have been renovated and refurbished with funds from the Ministry of Justice and the PSF. They have a total capacity of 32 beds in ten bedrooms, five on each of the two floors of the building. There are also two kitchens on each floor. At the time of the visit, one of the sentenced boys was on a high-security regime in a private cell. The others live in rooms of two, three or four. The hostels were equipped with individual beds, a table, chairs, a wardrobe, a cupboard and a TV set. The kitchen had a fridge, table and chairs. Bells were also installed in the rooms to alert the guards in case of emergency. Each dormitory had a sanitary facility with a toilet and a hot water shower. There was also a washer and dryer on the ground floor.

Compared to the previous building of the correctional facility in Boychinovtsi, this one is much smaller, but the layout and furnishing of the rooms make it resemble a boarding school. The rooms are more welcoming than be-

⁴⁶⁰ Kanev, K., Fartunova, D., Angelova, D., Ivanova, Zh., Stanev, K., Baeva, S. *Children Deprived of Liberty in Central and Eastern Europe Between Legacy and Reform*. Sofia: BHC, 2014, p. 132–152, available at: <https://www.dei-belgique.be/index.php/ressources-externes/publications/send/41-publications/174-children-deprived-of-liberty-in-central-and-eastern-europe-between-legacy-and-reform.html>. (In English.)

⁴⁶¹ *Ibid.*, p. 133.

⁴⁶² Vratsa Prison, *Annual Report 2020*, p. 19.

⁴⁶³ *Ibid.*, p. 20.

fore. However, during the BHC visit we noticed that just three years after the renovation, the hostels already had visible signs of wear-and-tear. Plaster was peeling off the walls, equipment was broken or torn off, some windows were scratched and some of the TV sets were broken. As elsewhere, the rapid deterioration is due to the poor quality of materials and furnishings used, which were not suitable for commercial-grade use. The NPM report on its visit to the facility in late 2022 noted the need to renovate the building and replace the flooring.

Upon admission to the institution, juveniles should go through the reception ward for initial adaptation, psychological assessment, etc. There is no separate reception room in the correctional facility, and the juveniles are placed in the reception ward of the prison for adults. They stay there for between 14 days and a month. During this period, they live separately from adult prisoners but remain isolated, usually in a single cell, and do not participate in educational or other group activities.

The correctional facility has a secondary school, "St. Cyril and Methodius", which offers education from I to XII grade. All those who have entered the JCFC during the first school term are enrolled as students. Those entering after the end of the first term are enrolled only if they have previously attended another school. Otherwise, the boys can visit the class as listeners. At the time of our visit there were two boys included in the classes as listeners. In 2020, at the end of the school year, two students had completed the lower secondary grades (grades V-VII) and nine students had completed the upper secondary grades (grades VIII-X). The school year 2020/2021 has started with 23 students⁴⁶⁴.

In recent years the number of illiterate minors in the JCFC is on the rise, regardless of whether they have completed some formal education. There is also an increase in the number of minors with intellectual disabilities and mental disorders and those who have special educational needs⁴⁶⁵. These children are taught by trained professionals from the Vratsa Regional Centre for Inclusive Education⁴⁶⁶.

Minors spend an hour and a half a day outdoors. Interviewees said that they are allowed go to the gym for 30 minutes a day. Since 2020, the JCFC has a sports center with a gym and a room for indoor games. Occasionally there are other activities such as cultural and sporting events and sports tournaments. The institution does not have a library and while there is a bookcase in the school, according to interviewees, it remains locked.

⁴⁶⁴ Ibid., p. 28.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

Juveniles cannot work for pay, but they can volunteer to clean the facility and take care of the green spaces. There are no vocational training courses at the correctional facility. In 2020, there was a group session on drug use prevention.

One of the leading reasons for moving the correctional facility from Boychinovtsi to Vratsa was to facilitate contacts with the outside world, including family visits. The goal was also to provide better access to cultural, sports and other events and to improve cooperation with NGOs. However, the remoteness of the correctional facility from the inmates' usual place of residence continues to be a serious obstacle to visiting. Juveniles are not rewarded with home leave, as per our knowledge. Usually, the relatives of the inmates live very far away, have limited income and prefer to send them the money they would otherwise spend on travel and accommodation. During the COVID-19 pandemic, 15-minute skype calls were introduced to replace the physical visits, but it is our understanding that they no longer take place. We didn't receive information on minors attending outside events.

The penitentiary cooperates with religious and public organizations that make donations (shoes, sanitary supplies) and provide other support to the inmates. The Foundation for Social Change and Inclusion, which offers temporary accommodation to persons leaving the penitentiary, is an important partner of the JCFB.

In 2020, 24 disciplinary sanctions were imposed in the JCFB⁴⁶⁷. In accordance with recommendations made by the CPT, the EPPDA amendments from 2017 changed the conditions for imposing the sanction "solitary confinement" for juveniles and the way the sanction is executed. The maximum period was reduced from five to three days and juveniles must now be taken out for school or work. The amendments prohibited single-cell isolation. Asked about disciplinary practice, a prisoner said that he had been punished with isolation in a solitary confinement cell for fighting. At the same time, another boy was also in solitary confinement. The two had been in separate cells but with an open door between them, which meant that effectively the cells were joined. The cell was equipped with a small chair and a small table, a metal bunk bed, a sink and a toilet.

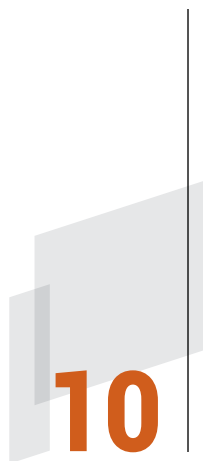
In 2021, there were no complaints filed from prisoners to the JCFB management. However, the researchers received several reports of harassment by guards. According to a juvenile inmate, one of the guards had a pattern of aggressive behavior towards some of the inmates. One of the boys said that a guard verbally harassed him, making inappropriate comments about him be-

⁴⁶⁷ Ibid., p. 29.

ing a Roma. Another said that he had not personally been a victim of violence, but knew of a boy who had been locked in the guards' room and harassed for picking up cigarette butts and smoking them. A third boy gave the name of the guard who harassed him. We did not hear of serious conflicts between the juvenile inmates.

There have been positive developments concerning the early release of juveniles. Prior to the legislative amendments to the EPPDA in 2017, only the prison governor and the district prosecutor could make a proposal for early release. In practice, this did not apply to juveniles. A review of the case law since 2017 shows that juveniles do appeal for early release, albeit not very actively, and most of their applications are supported by the prison and granted by the court.

After reaching the age of 18, juvenile inmates are transferred to serve the remainder of their sentence in a prison or a prison hostel for adults. The law allows those who are students to remain in the correctional facility until the age of 20. This can happen upon the proposal of the institution's governor or its educational board, but it is not a widely used option.



COMPLAINTS, ACCESS TO JUSTICE AND VICTIMIZATION OF COMPLAINANTS

A well-functioning complaint mechanism and the effective access to justice are two important safeguards against inhuman and degrading treatment, and for the protection of other fundamental rights. Complaint procedures on matters within the competence of the prison authorities have very low credibility in Bulgaria due to their unclear regulation and the lack of guarantees for impartiality. The 2017 EPPDA amendments expanded the options to seek judicial redress. However, these options, as well as the right to alert external institutions and organizations remain difficult exercise, due to the lack of information and legal assistance. Still, the most serious problem for all complainants is the penitentiary system's hostility towards them, which manifests itself through intimidation, institutional repression, formal and informal punishment.

10.1. Complaints

The procedure for complaints is not regulated in the legislation. According to our observations, there are no safe and confidential channels for complaints in any part of the system. In most places of detention prisoners must pass on their unsealed written complaint to the social work inspectors or the supervisory staff. In some prisons, complaints are collected by the leader of the prison group and then passed on to the inspectors. Prisoners have a firm perception that complaints are filtered by staff and that some do not reach their intended recipients, inside or outside the prison system. The complaints lodged with the prison authorities or with outside institutions via the prison are registered in a special notebook, which must include the subject. Prisoners may also send complaints outside the prison under the general procedure for sending letters. In such cases, the prison administration is not expected to know the content of the complaint.

A prisoner from the CTPH Cherna Gora stated that the prison administration checks his correspondence - both incoming and outgoing. A member of the administration makes him open the letters he sends to check the addressee, and the letters he receives are always unsealed. He also claimed that some of his letters, which the administration assured him had been sent, did not reach their addressees. After sending a complaint to the Prosecutor General, he checked by telephone whether the complaint had been filed with the Prosecutor General's office, but was told that it had not.

The prison administration has no obligation to issue registration numbers for the mail submitted by prisoners to be sent on their behalf. This creates problems, especially when prisoners have to provide evidence that they have complied with procedural deadlines for appeals or correcting mistakes in their complaints and claims, etc. Given that prisoners are mostly litigating against the penitentiary system, the lack of an obligation to issue a registration number allows the prisons to delay letters in bad faith, so that legal proceedings are terminated. For example, an inmate from Stara Zagora told us that his appeal was deliberately sent to the court several days after he had handed it over to the social work inspector. As a result, he missed the deadline for appeal and as he had no registration number for his outgoing mail, he was unable to prove that the delay was not his fault.

It is common for external institutions and the upper management of the penitentiary system to address their replies to prisoners' complaints, requests and reports to the prison, rather than the inmate. Thus, complainants get to see the content of the reply, but do not receive a copy of it. A prisoner explained that the replies he received from the Supreme Judicial Council, the Parliament, the Presidency and other institutions were brought to him unsealed and he had to sign that he was aware of them, but could not keep them. This prevents prisoners from appealing or otherwise responding to the replies. Additionally, when the correspondence passes through the prison administration, it inevitably reveals the content of the complaints and puts prisoners at risk of victimization.

A flagrant case of interference with the prisoner's right to correspondence with the BHC in the Burgas Prison unfolded in 2021. A letter from the BHC in response to his complaint was personally addressed to the prisoner. Instead of being handed over to the addressee, the letter was given to the prisoner only for a read-through and then taken by an administrative officer to be archived in the prisoner's file.

Prisoners write their claims and appeals by hand, and nowhere in the penitentiary is it possible to type and print or send court correspondence electron-

ically. Sometimes, when contacting external organizations or filing appeals, prisoners have to copy documents. As a rule, copying services are not available in prisons and the only way to copy documents is to hand them over to a lawyer during a visit to photocopy them outside. Only the Belene Prison provides such services at a cost of BGN 0.10 per page.

Few prisoners file complaints with the prison administration and the responses are usually that they are meritless. For example, there were six complaints against prison officers in the Sliven Prison in 2020, and the investigation found that the complaints were unfounded⁴⁶⁸. The Pleven Prison report for the first half of 2021, on the other hand, states that there were 17 complaints from prisoners and "[t]here were almost no complaints against the staff or the prison facilities. If such complaints are filed, they are incidental and are about a momentary irritation caused by the dismissal of an unfounded claim"⁴⁶⁹.

10.2. Legal information and legal aid

The introduction of preventive and compensatory remedies in the legislation in 2017 was not accompanied by an awareness-raising campaign among prisoners about the new mechanisms for protection against inhuman and degrading treatment. The prison administration is under no obligation to provide such information on entry into prison or at any other point during the sentence. There are also no forms or templates to facilitate referrals to the courts under chapters 6 and 7 of the EPPDA. According to Article 165, § 2 of the EPPDA, national and international legal acts governing penal enforcement should be made available for use in the libraries of prisons and prison hostels. The BHC found that the legal acts in the libraries, to the extent that there are any, are out of date, and where up-to-date publications are available, they are not easily accessible to prisoners. For example, in 2020, the BHC made a donation of legal literature, including copies of the EPPDA, to the CTPH Kremikovtsi. A visit to the library in 2021 found that the donation was locked in storage, and the copies appeared unused. In July 2021 there were two copies of two editions of the EPPDA in the library of the Burgas Prison and one of the copies included the 2017 amendments. Both books were stored in the librarian's desk instead of being displayed for use in the library. There was no legal literature in the library of the Debelt Prison Hostel at the Burgas Prison. In the library of the Bobov Dol Prison, visited by the BHC in July 2021, there were several editions of the *Criminal Procedure Code*, but all were outdated and did not reflect the preventive and compensatory remedies introduced in 2017. The only prison law library in Bulgaria at the Sofia Prison was closed in 2018. Prisoners across the country

⁴⁶⁸ Sliven Prison, *Annual Report 2020*, p. 13.

⁴⁶⁹ Pleven Prison, *Semi-annual Report of the Pleven Prison for 01.01.2021–01.07.2021*, p. 13.

do not have legal access to the internet, including to access legal information, communicate with lawyers or the court.

The National Legal Helpline of the National Legal Aid Bureau is a hotline for free legal advice. Until August 2020, prisoners were unable to access this public service because of a technical restriction on dialing 0700 numbers from prison telephones. The National Legal Helpline was made available for prisons and jails following a signal from the BHC. According to a letter of instruction from the National Legal Aid Bureau itself, which we saw posted in several places in the Burgas and the Bobov Dol prisons, enquiries on how to lodge complaints with the ECtHR are prohibited. The rules of the National Legal Helpline, as published on the website of the Ministry of Justice, do not contain similar restrictions on the topics of the requested legal advice.

Usually, prisoners bring cases on their own or with the help of other inmates who already have the knowledge and experience. It is difficult to get a lawyer to prepare their documents and in practice it almost never happens. The law requires applicants to fill in a legal aid form, which is not available in prisons, and prisoners are not familiar with the procedure. The lack of legal aid for bringing cases before the administrative courts results in the fact that many preventive remedy claims suffer from a series of defects or are irrelevant to the procedure and subsequently are rejected either on admissibility or on their merits. For many poor prisoners the state fee for initiating cases under the EPPDA is a barrier to access to court, despite the low sum of BGN 10. During our research, we also heard about cases in which prisoners pay the state fee from their personal prison account, but the penitentiary administration does not provide a document of payment to be attached to the complaint or claim.

By applying to the court, prisoners can request legal aid in the form of legal representation in proceedings. Among the complainants we spoke to, some preferred not to use the services of court-appointed lawyers. In their experience, court-appointed lawyers are often disinterested and inactive, and if the complaint or claim is dismissed, the cost of legal aid is borne by the prisoner. Inmates were dissatisfied with the quality of legal advice provided by the National Legal Aid Helpline and said that the helpline lawyers were not familiar with the procedures under the EPPDA. Prisoners are more satisfied with the work of paid lawyers, but few of them can afford to pay for legal services. On this subject, a life prisoner told us that he had represented himself in a case for compensation for poor conditions in the HSA in the Burgas Prison and then hired a lawyer to file the writ of execution against the GDEP for the award-

ed compensation. At least two interviewees said that they had hired lawyers to bring compensation cases with the understanding that the lawyers would be paid 30% of the compensation. An administrative officer at the Pazardzhik Prison believed that some lawyers who represent prisoners in compensation cases abused their clients by not paying them the compensation awarded by the court. The head of the CTPH Cherna Gora also reported potential irregularities. According to him, there was a lawyer who wrote complaints on behalf of prisoners without their knowledge.

10.3. Victimization of the complainants

The 2017 legislative amendments to the EPPDA and the *Criminal Procedure Code* strengthened the right to a remedy for violated rights of prisoners and ensured greater access to the judiciary. The reforms were met with criticism and resistance by prison authorities. They cited reasons such as the increased workload for the preparation of opinions, briefs and other documents required by the court; the obligation for the administration to notify prisoners in writing of its decisions affecting their rights and interests and the lack of legal advisers to represent the prisons.

However, our observations show that, in addition to the increased administrative burden, the prison administration also resists the reduction of its discretionary powers as a result of the increased judicial scrutiny of its work and the empowerment of prisoners to seek redress outside prison. Prior to the amendments of the EPPDA, only very few actions of prison authorities were subject to judicial review and they were explicitly listed. The negative attitudes towards strengthening prisoners' right to defense were expressed at the highest levels of government as early as 2018. Referring to the 2017 amendments to the EPPDA, the then Justice Minister stated that "Prisoners have more rights than obligations"⁴⁷⁰. She also said that the amendments „demoralize the prison staff because the changes prevent them from fulfilling their security and control obligations".

The prison system sees the use of remedies as problematic behavior, a direct confrontation with the administration and a sign of the lack of correction and re-education. Writing complaints to external institutions and taking legal action is seen as "a way of making sense of free time... looking for a way to weaken the institutions"⁴⁷¹. One prison governor defined prisoners who frequently write complaints as querulants (mentally ill people).

⁴⁷⁰ „Prison bosses demand legal changes due to large amount of paperwork", published on 10.04.2018 by www.lex.bg.

⁴⁷¹ Belene Prison, *Annual Report 2020*, p. 19.

Dissatisfaction with the exercise of the right of appeal is expressed in the annual reports of GDEP as well. For example, the 2020 Annual report states the following:

There is a negative tendency for prisoners and detainees to abuse the requests and complaints procedure. Often, through complaints to various institutions, prisoners try to put pressure on the [penitentiary] administration in order to achieve their own goals [...] Some prisoners ignore their obligations and focus primarily on the rights given to them by law. They make unjustified claims and insist that the administration satisfy them⁴⁷².

A striking example of this approach is the report of the Sofia Prison social work inspector from March 2021, submitted to the court following a prisoner's request for early release. Justifying the prison's negative opinion of the release, the inspector cites the submission of complaints as a major negative character trait. The report states the following:

One of the main characteristics of the personality and behavior of the [prisoner] [...] involves his numerous complaints and grievances to various institutions related to the quality of the food, the quantity of the food, the living conditions, the correspondence, his health, his legal status, etc. If his efforts fail at one institution, he directs them at another, a third, and so on, [...] Our correctional work with [prisoner] S. N. N. continues, but change is difficult because of the aforementioned personality traits. The continuous search for "his" truth is the basis for writing numerous complaints and filing lawsuits on various grounds⁴⁷³.

Responding to similar claims made by the Sofia Prison in another case for early release, the Sofia Court of Appeal firmly rejected the notion that exercising one's rights and seeking external redress can be qualified as problematic and unacceptable behavior. According to the Court, *"the use of legal avenues, by the means and in the manner provided for in the law, cannot be treated to the detriment of anyone on the pretext that he/she is unwilling or has a hostile attitude towards following the rules"*⁴⁷⁴.

⁴⁷² GDEP, Annual Report 2020, p. 12.

⁴⁷³ Ministry of Justice, GDEP, Report on prisoner S.N.N. from 1 March 2021.

⁴⁷⁴ Order No. 429/19.09.2019 on case No. 921 of 2019 of the Court of Appeal - Sofia City.

In every penitentiary, inmates told us that complaints against the administration have negative consequences, prolonging their stay in the institution. Thus, they refrain from using legal remedies. When asked whether he had filed complaints or grievances, a prisoner from the CTPH Kremikovtsi replied that he had not, because “whoever challenges the system will be crushed”. Another prisoner from Varna told us, “I have not tried to complain. If you do, you won’t work for the rest of your sentence”. In Belene, a prisoner pointed out that working prisoners were afraid to talk to BHC representatives because they might lose their jobs.

The most common examples of institutional retaliation against complainants given by inmates include: suspension from work, transfer to a closed-type hostel or denial of transfer to an open-type hostel, placement on a harsher regime or denial of change to a lighter regime, imposing disciplinary sanctions, transferring inmates to another prison, and writing negative opinions on applications for early release. A prisoner from the CTPH Boychinovtsi said that he was sanctioned only a day after winning a court case against the prison by using the compensatory remedy. The order did not mention the court case, but he is certain that he was punished because of it. Another prisoner said that he had been victimized after reporting misconduct by the guard of his hostel to the GDEP. The whistleblower was subsequently suspended from work, received three disciplinary sanctions, his regime was changed to a more severe one and he was transferred to the main prison building. A general regime inmate in the Belene Prison believed that he had not been moved to an open-type hostel and his regime had not been commuted to a lighter one because he had won three cases for poor prison conditions. At the time of the BHC visit he had 38 days left of his 14-year sentence. According to an inmate from the OTHP Razdelna, “if someone files a complaint, the right to take bread out of the canteen is suspended for everybody on his floor”. Another form of sanction is the planting of “drugs and phones on people who file complaints”. We heard a similar complaint in Pleven - that guards were “putting drugs in the mattresses”. An inmate from Burgas alleged that he was punished for filing a complaint against the prison by having his hotplate taken.

We found that prisoners in Pleven have very limited options to exercise their right to file complaints and grievances about the conditions in which they serve their sentences, cases of violence or other problems. Compared to other places, a significantly higher number of prisoners refused to talk to BHC researchers for fear of institutional reprisals, such as suspension from work, denial of change to a lighter regime, transfer or violence. We received numerous reports that prisoners were coerced by prison authorities to write false testimonies

against other prisoners and to withdraw complaints they had filed in exchange for lighter regime or other privileges.

We also found signs of victimization of the complainants and the persons who provide them with legal support in the information provided to us by a lawyer, representing several prisoners from the Pleven Prison, including in their complaints against the prison.

During our visit, the prison management showed an extremely hostile attitude towards the lawyer in question. In early November 2021 the lawyer had sent prisoners blank declaration forms through which prisoners could request a meeting with BHC representatives about violations of their rights. Immediately after the BHC's visit, the Pleven Prison administration referred the matter to the Sofia Bar Association, the prosecutor's office and the Ministry of the Interior. It seems that they have interpreted the events as a provocation and an attempt to set the prisoners against the prison. The Sofia Bar Association has refused to initiate a disciplinary inquiry into the case.

Another case of victimization is of a prisoner who testified in a case for damages for inhuman or degrading treatment launched by another inmate. The victimized prisoner was convicted of perjury for the following testimony: "The walking area is smaller than this hall we are in now, about 25-30 sq. m... There are no benches... there is no shade... it is muddy right now... No, the area is not covered with asphalt... our area is covered with sand and right now it is covered with mud too."⁴⁷⁵

The criminal charges against him were brought after a complaint by the prison governor.

Other interviewees reported that they were coerced to drop their complaints or not to testify in cases against the prison under the threat of worsening their conditions. One prisoner alleged that he had complained of discrimination but was made to withdraw his statement, so that he would not be deemed „higher risk“ in his risk assessment. Another prisoner said that after he had been called as a witness in a case for compensation for poor hygiene conditions, a member of the staff instructed him not to speak bad of the prison.

An inmate who won a court case for compensation because of inhuman and degrading prison conditions was allegedly told by the management: "We will make your life a living hell as long as you are in this prison." At his request, he was transferred to another prison, where he said he continued to suffer the negative consequences of his court case against the GDEP.

⁴⁷⁵ District Prosecutor's Office - Pleven. Indictment in pre-trial proceedings 1904/2020.

At the same time, prisons encourage inmates to withdraw complaints. In its annual report for 2020, the Belene Prison commends a prisoner for dropping his complaint against the GDEP, qualifying that as “demonstrating his loyalty to the institution”⁴⁷⁶. The prisoner in question was then enrolled in various courses and activities in the prison group.

10.4. Application of preventive and compensatory remedies

In June 2017, the ECtHR decided that the newly introduced remedies in the EPPDA could be considered effective with regard to inhuman or degrading conditions of detention in prisons and pre-trial detention facilities in Bulgaria. However, this does not seem to be the case in practice. According to official GDEP data, in the four years between February 2017, when the remedies were introduced, and the end of 2020, there were only 112 court cases initiated triggering the preventive remedy, 34 of which were terminated⁴⁷⁷. Of the cases heard by the court, the prisoners' requests for protection were granted in 25 cases and were rejected in 40 cases⁴⁷⁸. The low number of cases brought under Article 276 of the EPPDA can be explained by the problems we already listed: the lack of legal aid and sufficient information about the existence of the remedy, as well as the risk of victimization. Case law research also shows that most cases for the prevention of inhuman or degrading treatment are not related to overcrowding and material conditions, but to other aspects of imprisonment.

The prisoners we interviewed for this research were generally unaware of the preventive remedy. Only one prisoner told us he had used it to seek protection from the courts. A few months after the amendments came into force, he approached the court with a complaint that he was living in an overcrowded cell. The court ordered that he should be moved to a unit where he would be guaranteed 4 sq. m. of living space. Pursuant to the judgment, the prison governor transferred the inmate from the main building to a closed-type hostel, ordering that he be accommodated in „a unit providing not less than 4 sq. m. of living space per person“. The prisoner was initially placed in a cell with four other persons and was later joined by a fifth inmate. When he asked why the court's decision and the order of the prison governor were not respected, he was told that the area of the cell, in which he was accommodated was 26.2 sq. m. The real uncovered area of the cell was about 16-17 sq. m., as our researchers also saw.

⁴⁷⁶ Belene Prison, *Annual Report 2020*, p. 37.

⁴⁷⁷ Information received by the BHC under the Access to Public Information Act from the GDEP by Decision No Л-4821/10.11.2022.

⁴⁷⁸ Ibid.

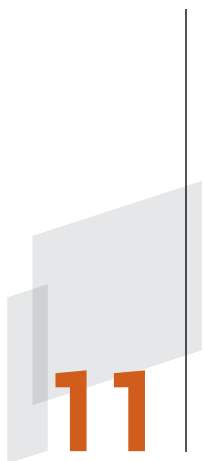
Prisoners use the compensatory remedy more often. Between March 2017 and December 2020, 1109 cases were initiated for compensation for harm suffered as a result of inhuman or degrading treatment in places of detention⁴⁷⁹. Of these cases, 131 have been terminated⁴⁸⁰. Although we do not have comprehensive statistics on the number of claims upheld, data from the GDEP shows that in 2021 the court ruled on 188 claims, upholding 90 and rejecting the rest⁴⁸¹. One of the issues in the application of the compensatory remedy is that compensations often remain low, even for serious violations. Interviewed prisoners also reported this problem to the BHC. A life prisoner who has fought several court cases for poor conditions said that the court lowered the compensation every year.

Life prisoners and prisoners with long sentences seek judicial protection against inhuman and degrading treatment more often than others. Due to the clear prospect of a prolonged stay in prison, the threat of institutional reprisals by worsening the conditions they face in the prison does not deter them from defending their rights. Moreover, the proportion of literate prisoners is higher among them. Access to legal aid and other forms of outside support is also important for bringing cases. Complainants serving sentences in smaller towns, where access to a lawyer is limited, bring fewer cases. According to the heads of the facilities in Bobov Dol and Cherna Gora, at the time of the researchers' visits there were no pending cases initiated by prisoners under either the preventive or the compensatory remedies. The degree of victimization of the complainants also affects the use of remedies. Another segment of prisoners who very rarely exercise their right to judicial remedy are women. The Sliven Prison is the only penitentiary institution for women and this makes the prisoners there more isolated from their relatives and their support. Also, women who are mothers of young children make considerable efforts to reduce their sentences through work and good behavior, which makes them avoid confrontation with the prison administration.

⁴⁷⁹ Ibid.

⁴⁸⁰ Ibid.

⁴⁸¹ Information received by the BHC under the Access to Public Information Act from the GDEP with reference №П-186/18.01.2022



CONTACTS WITH THE OUTSIDE WORLD

11.1. Visits

Prisons have a duty to assist prisoners in keeping their family relationships and contacts with the outside world, including by providing appropriate amenities for visits⁴⁸². Under the current legislation, all prisoners in places of detention have the right to receive visits at least twice a month, regardless of their prison regime and the type of prison facility in which they are serving their sentences⁴⁸³. Visits last up to 40 minutes. During the visits, relatives may bring food and other items based on a list approved by the prison administration.

There are different visiting regimes depending on the type of penitentiary facility:

- Visits in closed-type facilities are held in rooms equipped with partitions preventing direct contact, through telephone and under the supervision of a prison guard.
- Visits of detainees in open-type facilities, female prisoners and juveniles are held in rooms equipped with video surveillance and direct contact with visitors is allowed.

The regulation of visits in closed-type prisons in Bulgaria is incompatible with the international standards on the right to family life of prisoners. This stems from the insufficient frequency and duration of visits and the automatic application of security measures excluding physical contact. In this respect,

⁴⁸² REPPDA, Art. 72.

⁴⁸³ EPPDA, Art. 86, § 1, pt. 2.

the CPT recommendation to extend the duration of visits to one hour and to have them at least once a week without partition, except the particular cases where it is necessary, remains unfulfilled⁴⁸⁴.

Many of the prisoners are not visited by their families regularly or at all. The reasons for this are complex, but according to our observations, the main causes are the remoteness and difficult accessibility of some prisons, the limited financial resources of prisoners' relatives and the poor organization of visits by the prison authorities.

In terms of access, visits are difficult when the penitentiary facilities are located in small towns or outside towns in places without public transport. The Pleven Prison, The OTHP Ramanusha, the Debelt Prison Hostel and the CTPH Cherna Gora are examples of such facilities. Prisoners explained that these institutions could only be reached by private car or taxi and their relatives couldn't afford to visit them. There are inmates who, due to the regulations, are placed initially in prisons located hundreds of kilometers from their usual residence and social circle. For example, the Lovech Prison accommodates closed-type inmates with permanent address in the Shumen region, 250 km away⁴⁸⁵.

The situation is even worse for women and juvenile girls and boys. There is only one penitentiary institution in which they can serve a custodial sentence and it is likely to be far from their family. Many women and juveniles are thus left without visits because a 40-minute visit costs their relatives long hours of travel and considerable transport and accommodation expenses. An imprisoned boy said that he had not had a single visit for the 8 months he had been incarcerated because his parents lived in the remotest parts of North-East Bulgaria and could not afford to travel to Vratsa. In these cases, the prisoners' families prefer to transfer the money they would otherwise spend on transport and accommodation to the prisoner's personal account to shop at the prison store.

The 2017 amendments to the EPPDA provided more favorable visitation and telephone conversation conditions for the prisoners who serve sentences farther away from their permanent address. According to the law, these should have been established with an order of the director of GDEP, but we could not find such an order.

⁴⁸⁴ 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 (CPT), CPT/Inf (2018) 15, § 101, available at: <https://rm.coe.int/16807c4b74>. (In English)

⁴⁸⁵ Order No П - 919/8 March 2017 of the director of GDEP on the allocation of prisoners to prisons, correctional facilities and prison hostels.

Usually, the visits are scheduled so that each prison group has slots twice a month, on Saturday or Sunday. In some larger prisons, such as the Sofia Prison, inmates can also be visited on weekdays. In other prisons, such as Belene and Sliven, visits are allowed every weekend.

Prison visits are also hampered by the outdated way they are organized. No information is published anywhere on the internet about the visiting days or the rules and procedures of the visits. There is no system for pre-booking visits and usually visitors have to wait for hours to have a 40-minute visit. Some places have waiting rooms, but they often remain locked (Sofia Prison) or are very unwelcoming (CTPH Kremikovtsi). The Debelt Prison Hostel has one of the very few new and well-organized waiting rooms.

Other prisons (Pleven and Burgas) have no waiting rooms at all and the relatives of the prisoners are left waiting outdoors for hours, even in bad weather conditions.

Talking about the visits, an interviewee said that he is a single father of a young child. The child was being raised by the prisoner's mother, but she had multiple chronic illnesses, which made it difficult for her to visit him, because of the long wait.

Relatives who come for a visit are issued with a visit ticket, which has their name, national ID number and address, as well as their relationship to the person visited. Visitors should fill in a *Food products and items form* for any food parcels and other items they bring during a visit.

Visiting rooms in closed-type facilities have similar layout. There are usually two rows of chairs separated by a transparent glass or plexiglass partition and a mesh. Prisoners are on the one side and the visitors on the other. Conversations are conducted by an intercom-like telephone. The capacity of the room allows for between 7 and 18 visits to take place at the same time. Up to four visitors per prisoner are allowed, but if the visitors are close relatives, there is no limitation. The large size of the room and the large numbers of people may lead to considerable noise and poor communication. Sometimes, the telephones are not working, and people have to shout, which disturbs others.

*The visiting room at the CTPH **Kremikovtsi** is in a shack between the administrative building of the prison and the hostels. It is lined with wood paneling and has 18 visiting spaces. During the COVID-19 pandemic the number of visits that could be held simultaneously was reduced to 9. Prisoners and visitors stand one meter apart, separated by a mesh and glass partition. Conversations are conducted by telephone. There is a large solid fuel stove on the visitors' side of the partition and the room is heated with coal and wood. An inmate described*

the conditions as „appalling“. The room is full of bedbugs, there is glass and net partition in the middle of the room to separate the visitors. The telephones are very old and often do not work, so visitors have to shout to be heard. The room is very cold in the winter.”

In the Sofia Prison 16 visits can be held at the same time. The prisoners we spoke to said that their relatives have to wait a long time outside the prison before they can go in for a visit, and that they have to shout in the visiting room to be able to hear each other because many people are talking at the same time.

*The visiting room in the **Pleven Prison** has 10 spaces. The partition between the prisoners and the visitors is made of mesh and plexiglass/glass. This makes it difficult to clearly see each other's faces through the partition and impossible to read a document through it. Conversations are conducted by telephone. According to management, the room has air conditioning on during the visits, but prisoners' attorneys denied this. Visiting hours are from 8:00 a.m. to 4:00 p.m. on Saturdays and Sundays. There is no public transportation to the prison. Visits are held in groups of 6. Food parcels and items brought by visitors pass through a scanner and scale. There is a stall next to the visiting room from which prisoners' relatives can shop.*

Many of the inmates from closed-type facilities think it is unacceptable to have no physical contact with their loved ones. This is particularly hard for fathers who cannot hug their children during visits. Neither the procedures nor the facilities for visits in male prisons are adapted to the needs of visiting children. Only the women's prison in Sliven, which allows weekly visits with the possibility of physical contact, provides more favorable conditions for maintaining contact with minors.

There are no partitions during visits in open-type prison hostels, but that doesn't necessarily mean that visitors and prisoners can be in physical contact. When the weather permits, visits in the Razdelna Prison Hostel are held outdoors. There is no designated visiting room at the OPH Ramanusha and visits are organized in the entrance hall of the hostel or in the courtyard.

With few exceptions, the same rooms are used for both family and lawyer visits. Lawyer visits take place from Monday to Friday, during the working hours of the prison administration. In some places prisoners complained that the guards were not only observing them at a close distance during the visits, but they were also eavesdropping. Should any side decide to pass on documents, they have first to be seen by the guard who ultimately decides whether to hand them over.

After the government declared a state of emergency due to COVID-19 in March 2020, visits were temporarily suspended in order to minimize the risk of spreading the virus in prisons. This caused discontent among inmates, especially those in closed-type facilities, since their visiting rooms have partitions and the visits do not involve physical contact, which rules out the risk of airborne transmission. In order to mitigate the negative effects of the suspension, prison authorities introduced the possibility of video calls (over Skype) two or more times a month for 15 minutes per prisoner, in all penitentiary institutions. These calls were conducted in different places: the office of the social work inspector (CTPH Vit), the room for extended visits (Sofia Prison), the school (JCFB at the Vratsa prison), but always in the presence of a social work inspector. In many institutions the video calls continued even as in-person visits were reintroduced. During our visit to the Razdelna Prison Hostel, for example, it became clear that 4-5 prisoners whose relatives live abroad or far away, talk to them over Skype. In other prisons, such as the CTPH Kremikovtsi and the Bobov Dol Prison, online visits were discontinued.

In addition to the monthly visits, which all prisoners are entitled to, visits may be granted as rewards in accordance with the EPPDA. These are extended visits of up to 4 hours in special rooms with more furniture and without partitions, allowing for direct contact between the prisoner and visitors⁴⁸⁶. According to the legal requirements, the rooms for extended visits are under video surveillance and meetings in them are supervised by the guards. Unlike regular visits, during extended visits home-cooked food or other food and drink bought from the prison store are allowed. In 2021, 1472 inmates, or about 25% of the average prison population that year, received an "extended visit" reward.

Some, but not all prisons and prison hostels have designated rooms for extended visits. In the Sofia Prison the room has two tables with chairs, a microwave, an electric kettle and a toilet. After the start of the COVID-19 pandemic, a computer for skype calls was also installed. The visits are monitored by a guard through the glass door as well as by CCTV. The room for extended visits at the CTPH Kremikovtsi has a large wooden table, benches along three of the walls and CCTV. In Debelt, there is a room with five tables and chairs, which is used for both the extended visits and the regular monthly visits without partition of the inmates in the open-type hostel. During our visit in Plevna, we witnessed an extended visit in a designated area in the entrance hall of the building, furnished with a wooden table and benches. A guard was present during the visit. The Sliven Prison is the only one that has a special building for extended visits. It is located in front of the prison and it is equipped with a kitchenette, a sofa, a table and a bathroom.

⁴⁸⁶ REEPPDA, Art. 73, § 17.

In 2019, on an appeal by twenty prisoners from across the country, the Supreme Administrative Court revoked part of Order No. Л-721 from 29 February 2016 of the Director of the GDEP. The revoked provision stated that for closed-type facilities and correctional institutions, extended visits must be held in rooms under video surveillance and in the presence of guards⁴⁸⁷. The act was annulled because it lacked the mandatory reasoning. Meanwhile, however, legal provisions were amended and video surveillance during extended visits was specifically introduced in Article 73, para 18 of the REEPPDA. In the same year, prisoners applied again to the SAC, requesting the repeal of Article 73, § 18 of REEPPDA⁴⁸⁸. The case was brought to court, but as of the end of 2022 the proceedings have not started.

Up to at least 2008, it was common for prison guards to reprimand prisoners and visitors and even stop the visits if they did not speak Bulgarian. We didn't encounter such cases in our research in 2021.

The execution of a custodial sentence may be temporarily suspended by a prosecutorial order on several different grounds. They are listed in Article 447 of the *Criminal Procedure Code* and include "exceptional family or personal reasons". In 2021, 183 convicted persons had their sentences temporally suspended on these grounds⁴⁸⁹. The „home leave" reward, which is granted by the prison governor, is another option for temporary release from prison. However, the present study shows that prisoners in closed-type facilities are less likely to be let on temporarily leave for family or personal reasons, even when it is to attend the funeral of relatives. We interviewed an inmate of a closed-type facility, who said that he had applied to the prosecutor for a leave in 2020 when his brother died. The prison informed him that the application was rejected, but it later transpired that this had been the prison's decision, while his application hadn't made it to the prosecutor at all. Another interviewee recounted that when his mother died in 2020, he was not informed of this and neither he nor his brother, who had 40 days left on his sentence, were able to attend the funeral. A man serving a sentence in the Burgas Prison was refused permission to attend his father's funeral. He mentioned that another prisoner was allowed "home leave" for the funeral of a relative, but the prisoner in question had only 10 days left of his sentence.

⁴⁸⁷ Decision No. 7205 of 14.05.2019 in administrative case No. 3502/2018 of the Supreme Administrative Court.

⁴⁸⁸ Administrative Case №1969/2019 of the Supreme Administrative Court.

⁴⁸⁹ GDEP, Annual Report 2020, p. 14.

11.2. Telephone calls

The use of the “Kontel” telephone system, introduced in prisons in 2007, was discontinued in 2016. This system had been criticized for several reasons, including the limitations on the number of telephone numbers that could be dialed and the possibility of unchecked monitoring of prisoners’ calls by the prison staff.

The “Kontel” system was replaced by telephones with phonecards *Mobica*, supplied by the BTC. The main problem with the new system is the high call rates. We received numerous complaints about this from prisoners in all the places we visited.

The prices of telephone services for prisoners are higher than those offered on the open market. In addition to the cost of the service provider, a surcharge of 7% is added to the price of the phone cards that goes to the PSF. As a result, a phone card with credit for a 30-minute call in the networks of mobile operators in the country costs BGN 12,50. This cost is covered entirely by the prisoners (or their relatives) and the Ministry of Justice not only fails to cover any costs, but also earns an average of about BGN 1 from each phone card sold through the PSF.

Prisoners may be granted free access to a staff telephone “as an exception” and “in connection with serious family problems or for urgent legal reasons”⁴⁹⁰. In reality, prisoners who have no income and receive no financial support from outside do not make phone calls unless another prisoner gives them his/her card. However, this is against the rules and can lead to disciplinary sanction. An interviewee said that other inmates bought him phonecards in exchange for food he gave them.

Another problem reported by inmates was the location of the phones. In some places, they are installed next to the guards’ booths and this allows for eavesdropping on conversations. Inmates housed in the CTPH Vit complained that the telephone was in a small and open area where access depended on weather conditions.

In April 2021, the GDEP announced a public tender for “Construction of a phone communication system for persons in places of detention”. The subject of the procurement contract is “the complete con-

⁴⁹⁰ REEPPDA, Art. 79, § 3.

struction, installation, configuration and commissioning of a communication system for telephone calls in all prisons, prison hostels and pre-trial detention facilities of the GDEP".

Clause 1.2 of the technical specification of the contract requires the communication system to be equipped with a terminal for local control and monitoring of calls, meeting the following conditions:

The terminal for local control and monitoring consists of a computer and a connected telephone for listening. This terminal is placed locally and operated by an employee of the prison who monitors a number of calls that are conducted on the special phone sets.

The local monitoring of the calls is done via the computer, which displays the active calls for that area (site or sites) with a dialed number or extension (assigned to the user).

Such a terminal should also be placed in the GDEP main office and it should be possible to monitor all calls if necessary. One terminal should be able to be control multiple calls simultaneously.

The staff member controlling the calls should be able to:

- select the calls to monitor and intervene - stop or record them;
- have access only to the phone sets assigned to him (this excludes access to phone sets in other locations).
- any interference with the system must be duly recorded, noting the username and day, date and time, to be stored for a minimum of 3 years.

This wording suggests an intent to unlawfully interfere with inmates' telephone calls. The Constitution, in Article 34, § 2, establishes that the judiciary has the exclusive power to authorize interference with the inviolability of correspondence, only when that is necessary to detect or prevent serious crimes. The potential contractor is required to set up a system that allows for the listening, disconnecting, recording and storing of prisoner calls by GDEP officials. There is no word of a procedure for judicial authorization of such wiretapping. Obviously, the current legislation does not authorize the GDEP to interfere with the inviolability of correspondence. Even if we assume that the tender lists the above-described functionalities in order to facilitate the possible use of special intelligence means under the Special Intelligence Means Act, GDEP officials are not legally authorized to use such means and it would therefore be unlawful to

for them listen to, record and store telephone calls of prisoners.

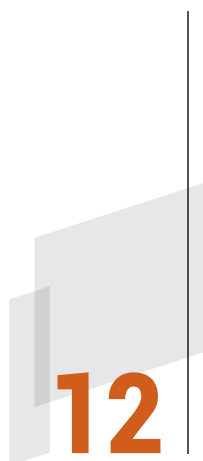
*A contractor was selected on 10.12.2021, but the tender was appealed before the Commission on Protection of Competition, which ruled that it contradicted the **Public Procurement Act** on grounds unrelated to the above. This procurement procedure was terminated with a decision of the director of the GDEP on 13.05.2022.*

Mobile phones are banned in prisons, but they can be found in almost all penitentiary facilities. The widespread use of mobile phones is evidenced both by the interviews conducted with prisoners and by the prisons' annual reports. In 2020, 98 mobile phones and 67 SIM cards were seized during searches and seizures in the Sofia Prison alone⁴⁹¹. Usually, the guards smuggle the phones into prisons and sell them to the inmates. Prisoners who can afford it prefer mobile phones because it is cheaper and they can make video calls.

11.3. Written correspondence

It is our observation that written correspondence has lost its relevance as a means to contact relatives and friends. However, it remains the only possible way to communicate with institutions and initiate proceedings, especially with the courts and the prosecutor's office. It is also actively used to contact the ombudsman and NGOs. The problems of sending and receiving written correspondence are discussed in the section on "Complaints, access to justice and victimization of complainants".

⁴⁹¹ Sofia Prison, *Annual Report 2020*, p. 16.



12

WORK

12.1. Summary

Work is very important for prisoners for several key reasons. First, it is taken into account when determining the degree of correction and rehabilitation of inmates. Then, it is a source of income and a meaningful activity which allows for prisoners to obtain professional qualifications. Above all, work reduces inmates' sentence, as, according to the law, two days of work are counted as three days of imprisonment. At the same time, prisoners cannot choose the type of work assigned to them, and refusal to perform it ends up on their file, adversely affecting their ability to improve their situation. In some cases refusal to work may lead to disciplinary sanction.

Working prisoners do not have the rights workers have according to the *Labor Code*. They don't have employment contracts or job descriptions. They don't have pension-, health-, maternity leave-, unemployment- or occupational hazard insurance. However, they pay personal income tax. Most prisons have a 6-day work week and are not paid overtime.

Job vacancies are determined by the correctional institution according to the needs of the PSF and the available positions in servicing and maintaining the prison itself⁴⁹². Under certain conditions, prisoners may work for companies and individuals outside of prison.

Our information and analysis suggest that about 20-25% of the average yearly prison population is engaged in paid work. The figures vary considerably depending on the type of institution. Inmates in prisons and CTPHs work only in the area of the respective facility. The main type of work consists of provid-

⁴⁹² REEPPDA, Art. 164, § 1.

ing services and maintenance of the facilities, meaning that no more than 10% of prisoners can be employed. In some closed-type facilities (the prisons in Pazardzhik, Belene and Vratsa, the CTPH Boychinovtsi) this is the only opportunity for paid work. In other institutions such as the prisons in Bobov Dol and Sofia and the CTPH Kremikovtsi there is only one type of employment, which is very limited compared to the number of inmates. The Sliven Prison offers better employment opportunities. It has three working sites, which employed about 50 prisoners at the time of our visit. There are two working sites in the Pazardzhik Prison, employing an average of 80 prisoners. In the Plovdiv Prison there is only one working site, but it employed 80 prisoners as well.

The employment rate of inmates in open-type hostels is higher because they can be taken to work sites outside the prison without being escorted by guards. Demand from businesses for cheap labor, such as prisoners, is high. On the day of the BHC visit, 63 prisoners lived in the OTPH Pazardzhik and 40 of them had paid employment. In the OTPH Hebros at the Plovdiv Prison, 50 out of 70 inmates were out to work on external sites on the day of our visit.

The 2017 amendments to Article 167 of the REEPPDA further expanded the procedure for announcement of job vacancies, selection of candidates and employment of the workers in places of detention. The goal was to improve transparency and ensure equal opportunity for employment⁴⁹³. Prisoners are informed about job vacancies by posters, which are placed in visible places in the prison. They submit their applications and the relevant inspectors give their opinions. The decisions are taken by a committee and prisoners are subsequently informed. Nonetheless, one of the main work-related complaints among prisoners was the arbitrariness of the employment procedure. A number of interviewees felt that the prison management had to be bribed in order to get a position in the service and maintenance of the prison, or that only prisoners who were "convenient" to the staff were hired. On the other hand, the prison administration complained that, due to a mismatch between qualifications and actual knowledge and skills, there was a shortage of skilled labor for many full-time positions.

The emphasis in work with juvenile prisoners is on education and, although they can, they are not employed for remuneration. Inmates who have been certified by the Medical Disability Commission (MDC) can't work either. We received a very specific complaint from the prison in Burgas where the management had prohibited life prisoners living in common cells to work on the territory of the prison, but outside the main prison building. This limits their

⁴⁹³ REEPPDA, Art. 164.

opportunities to take up paid positions such as those available in the institution's workshops.

12.2. Remuneration

Prisoners perform both paid and unpaid work. The guiding principle is that prisoners work for remuneration⁴⁹⁴. For any work except the voluntary unpaid work and maintenance and hygiene duties prisoners receive a certain proportion, but no less than 30 %, of the wage for the job.

Order No. ЛС -04-1373/23.08.2017 of the Minister of Justice established the remuneration that prisoners receive for their work as follows:

1. Workers with wages based on daily labor output rates in manufacturing and farms of places of detention and in the work sites of other organizations - 40% of the wage for the work.
2. Workers on staff, servicing and maintaining the facilities of the places of detention- 40% of the minimum wage, and workers holding a licensed position - 45% of the minimum wage.
3. Working inmates housed in OTH are paid 50% of the minimum wage.
4. Working inmates housed in CTH are paid 40% of the minimum wage.

The part of the remuneration not paid to the working prisoners, between 50% and 60%, goes to the PSF. This percentage is unfairly high, especially considering that only a small part of the profit made by the PSF is invested back into improving conditions in prisons, training, cultural, sporting and other activities for prisoners, as the law requires. Instead of going to the PSF, part of the wages of working prisoners could be set aside in a deposit account. These funds could be transferred to prisoners upon their release when many of them find themselves on the streets, without resources and shelter and at high risk of committing new crimes.

The wages of the employees in workshops are mostly based on daily labor output rates. If the daily output rate is not 100% completed, the working day doesn't count as full⁴⁹⁵. Almost all inmates we spoke to believe that the daily output rates are inflated, making them difficult or impossible to achieve. The low pay and the low number of approved working days that are counted towards sentence reduction, often accompanied by poor working conditions, discourage workers and some of them prefer not to work. Such is the case of an inmate from the Razdelna Prison Hostel who worked for a short time in

⁴⁹⁴ Criminal Procedure Code, Art. 41, § 1.

⁴⁹⁵ EPPDA, Art. 178, § 2.

the concrete block workshop, but was paid BGN 20 per month for doing heavy work and gave up. An inmate from Plovdiv was provided with a job in the plastic castings workshop. He told us that in the first month all his working days were recognized, but after that they were recognized to the extent of fulfilment of the output. Thus, some prisoners only achieved a 3-4 days sentence reduction for a month's work. He refused to work, also because there was glass wool in the workshop which gave him a rash. An inmate working on a toll manufacturing contract in one of the workshops of the Sliven Prison, where the remuneration and the approved working days are based on the daily output, showed us a pay slip for BGN 50 gross. She had 5 BGN deducted from it as income tax, 20 deducted because of distraint, and a net salary of BGN 35. She had managed to reduce her sentence by 4 days.

Under Article 80 of the EPPDA, prisoners may be assigned to perform voluntary unpaid work. These should be mainly non-commercial activities: improvement, maintenance and sanitation of the prison facilities; improvement, maintenance and preservation of cultural, historical or architectural monuments, state or municipal sites; restoration of damage caused by fires and natural disasters or prevention of accidents; organization of literacy, creative, cultural, sporting and other activities attended by prisoners⁴⁹⁶. Voluntary work also counts towards the reduction of sentences.

Due to the shortage of paid positions, voluntary work is very popular in all penitentiary institutions as an incentive for good behavior. Jobs for volunteer workers are determined by the social work inspector and there is no limit on their number or type. Generally, these include duties such as cleaning corridors, common rooms, or the prison yard; caring for sick prisoners; working as orderlies; working in the laundry; managing the gym or other sports facilities, and maintaining green spaces. For example, in 2020, inmates of the OTPH Pleven cleaned and improved the area of the city park. In 2021, a group from the OTPH Debelt volunteered at an archaeological site in the Sredets Municipality, while another group volunteered in the Kameno Municipality.

Besides that it is unpaid, another main issue with voluntary work is that it is part-time. An inmate from the Vratsa Prison voiced the dissatisfaction of many prisoners with the labor reform. He was employed pursuant to Article 80 of the EPPDA. For a long time, his workday had been counted as an 8-hour workday and each one counted towards sentence reduction. However, for the past few months his workday had been recalculated as a 6-hour workday. This applies to many prisoners in his situation. The administration started adding up the hours and dividing the total by 8 hours to get the number of days that

⁴⁹⁶ EPPDA, Art. 80, § 1, pt. 1-4.

count towards sentence reduction. Another inmate said that he cleaned the canteen as a volunteer, but the hours which counted towards sentence reduction were very few. He has applied for paid work but has not been approved. Because he is illiterate, he asked others to write his job applications at the cost of 1-2 cigarettes.

In addition to these activities, prisoners are assigned voluntary unpaid work for the PSF. In our research we heard of many cases in which the fund used unpaid prisoner labor to execute for-profit external manufacturing contracts. The voluntary labor of prisoners is widely exploited in the agricultural enterprises of the PSF, as well. The fund also employs volunteers under Article 80 of EPPDA for renovation and improvement works in places of detention.

This practice has been criticized by the NPM. From its report following an inspection in the Sofia Prison in 2019 we learn that with his Order No. Л-3392/25.07.2019, the director of the GDEP instructed the governor of the Sofia Prison to stop outsourcing voluntary labor to private companies. The order concerned cases of volunteers working on for-profit projects in the printing workshop of the prison. In its report the NPM states that the practice of people volunteering part-time in otherwise paid positions is unlawful and has been correctly terminated. Our visit to the same workshop in 2021 revealed that this practice had been reinstated.

12.3. Employment in servicing and maintaining the prison facilities

The preferred employment for inmates is to work in the services and maintenance of the prison – in the kitchen, laundry, as barbers, electricity technicians, carpenters, hygienists, warehouse workers and other service staff. The advantages of this employment are that it is permanent, independent of contracts from outside companies, not rationed and the pay is linked to the minimum wage. The remuneration comes from the budget of the penitentiary. In some closed-type establishments (the prisons in Belene and Vratsa, the CTPH Boychinovtsi), work in servicing and maintaining the prison facilities appears to be the only opportunity for paid labor and competition among prisoners is very high. Every year the Minister of Justice approves the number and type of positions in service and maintenance, which can be taken up by prisoners. As per the regulations, they may not exceed 12% of the average number of prisoners in prisons and correctional facilities. Thus, in 2020, the average number of employees in the service and maintenance was 23 prisoners in the Sliven Pris-

on⁴⁹⁷, 42 in the Belene Prison⁴⁹⁸, and 57 in the Varna Prison⁴⁹⁹. Here is what the Pleven Prison says in its annual report of 2020:

[T]he approved staffing levels for inmates employed in service and maintenance are too insufficient to provide every willing inmate with the opportunity to work, as the staffing level is only 12% of the available inmate population. For the calendar year 2020, only 48 staff positions have been approved⁵⁰⁰.

In order to employ more inmates in paid positions, there is a trend to split one position between two people. The Vratsa Prison has another practice, described in its annual report: prior to getting a staff position, prisoners spend some time volunteering under Article 80 of the EPPDA⁵⁰¹. The legislation allows for employment with a probationary period, but it does not allow unpaid work for a service and maintenance position.

12.4. Work for the PSF

The Penal Service Fund State-Owned Enterprise (PSF) was established within the Ministry of Justice with the task of improving conditions for the execution of penalties. It has various sources of income, but the main one is prison labor. The PSF hires out prisoners to private companies, fulfils external orders and commissions with prison labor or employs prisoners in its own workshops and farms. The PSF generates most of its profit from the prisoners whose labor is hired out to private companies, and more precisely, from the percentage of their wages it retains.

TABLE 18. **Prisoners working for the PSF by type of employment between 2019 and 2020**

	2019	2020	2021
Prisoners hired out to private companies	638	347	518
Prisoners who worked on toll manufacturing contracts	270	227	247
Prisoners who worked in the PSF workshops	50	44	46
Prisoners who worked on the PSF farms	36	38	39
Prisoners who worked in other areas	42	40	70
Total	1036	696	920

Source: PSF, Financial statements 2019 - 2021

⁴⁹⁷ Sliven Prison, *Annual Report 2020*, p. 12.

⁴⁹⁸ Belene Prison, *Annual Report of the Belene Prison 2020*, p. 29.

⁴⁹⁹ Varna Prison, *Annual Report 2020*, p. 86.

⁵⁰⁰ Pleven Prison, *Annual Report of the Plevna Prison 2020*, p. 12.

⁵⁰¹ Vratsa Prison, *Annual Report 2020*, p. 13.

12.5. Work in the PSF workshops

On paper, the PSF had workshops in ten of its territorial divisions in 2021, and in reality, it had workshops in only two of them: the Plevna Prison and the Vratsa Prison.

but most places had very little work or had ceased operations altogether. During the year, 46 prisoners were employed in the PSF workshops.

TABLE 19. **Employment in the PSF workshops in 2021**

Territorial division	Workshop	Employed prisoners
Belene Prison	Basketry	0
Belene Prison	Rattan	0
	Timber harvesting and wood processing	0
	Nets	1
Burgas Prison	Mechanical workshop	12
Varna Prison	Mechanical workshop	2
	Furniture workshop	2
Vratsa Prison	Furniture workshop	0
Pazardzhik Prison	Rattan	0
Plovdiv Prison	Special unit	1
Sliven Prison	Sewing workshop	7
Sofia Prison	Solar systems	3
Stara Zagora Prison	Furniture workshop	15
	Window workshop	3
Total:		46

Source: PSF, Annual Report 2021

In 2021, the researchers visited the Solar Systems workshop, which is located in the courtyard of the Sofia Prison. The workshop was constructed in 2015 through the project "Construction of green production workshop", which was implemented by the PSF under the "Green Industry Innovation - Bulgaria" program within the framework of the NFM 2009-2014. The amount of funding from Norway is EUR 414 896. A press release from the Ministry of Justice about the start of operations of the workshop stated the following:

The workshop in the Sofia Prison specializes in the production of solar panel collectors and water heating devices for environmentally

friendly production of heat and hot water. They are applicable for all types of buildings where hot water and heating are used. The workshop is equipped according to modern standards for environmental protection and ecological parameters. The technological process will be based on the principles of efficiency, recycling and virtually waste-free production. Nearly 130 inmates from the Sofia Prison have already been trained in the techniques of manufacturing the solar panel collectors and water heating devices for environmentally friendly production of heat and hot water.

According to information from the PSF website, prisoners in the Sofia Prison will produce solar vacuum tube panel collectors for hot water or heating. Three sizes heat pipe vacuum tube copper collectors “will be” manufactured.

According to a representative of the PSF, with whom the BHC spoke on site, solar panels have never been produced in this workshop due to the lack of all the necessary machinery for the production process and the relevant patents. According to official data, the workshop was only put into operation for training prisoners and “[a]t present, the existing machinery needs to be inspected and renovated and new equipment added for the production of stainless-steel water heaters.”⁵⁰² The GDEP plans for inmates to work on ‘inhouse’ contracts in the workshop⁵⁰³.

At the time of the visit, six prisoners were employed in the workshop - three volunteers and three paid workers with remuneration based on output. Their work didn’t involve solar collectors, but the manufacture and repair of other metal products (safes, bars for the prison windows, etc.).

Although it produces basically nothing, the workshop has significant expenditures – mainly the depreciations of the expensive machinery, but also the salaries of the PSF employees and the cost of materials. In 2021, the workshop made BGN 12 971 in income and had expenditures of BGN 173 120, of which less than BGN 1000 was on prisoners’ wages⁵⁰⁴.

⁵⁰² PSF, *Annual and financial report of the Prison Service Fund in 2021*, p. 4.

⁵⁰³ *Ibid.*

⁵⁰⁴ *Ibid.*, p. 71.

12.6. Agricultural work

Very few inmates are employed by the PSF for agricultural work. Their number in 2021 was 39. 36 of them worked in animal husbandry and three in crop production⁵⁰⁵.

In 2021, the largest employer in agriculture was the dairy farm at the Belene Prison (OTPH Belene) with 22 prisoners⁵⁰⁶. Some of the prisoners who work in the farm spend the night there. During an on-site inspection in 2022, the NPM team found that living conditions were very poor and the premises were heated with wood and coal stoves⁵⁰⁷. In 2017, the PSF received funding from the Rural Development Programme to build a dairy, yoghurt and cheese production facility, but as of 2021 this project has not been implemented.

In 2021, eight prisoners were keeping cows, sheep and goats for dairy production in the PSF territorial division in the OTPH Smolyan⁵⁰⁸. The hostel has a dairy where four prisoners were employed.

The PSF territorial division at the Vratsa Prison has organized sheep and goat farming and crop production at two external sites. According to the PSF reports, two inmates were employed at these sites in 2020⁵⁰⁹. At the same time, the 2020 Annual Report of the Vratsa Prison states that 22 inmates from the OTPH Vratsa were accommodated on these external sites⁵¹⁰. This suggests that many more workers were involved in the activity of the farms, but they did not receive remuneration for their work.

The prisons in Belene, Burgas, Lovech, Pleven and Pazardzhik have orchards and other crops. The number of prisoners engaged in crop production in 2021 was three - two in Belene and one in Burgas⁵¹¹. In all likelihood, voluntary unpaid labor is widespread at these prisons as well.

12.7. Work on toll manufacturing contracts

The PSF offers toll manufacturing services for which it employs prisoners. In 2021, all prisons except Belene provided such services. In total, 274

⁵⁰⁵ Ibid., p. 59.

⁵⁰⁶ Ibid., p. 61.

⁵⁰⁷ Ombudsman of the Republic of Bulgaria, Report of the National Preventive Mechanism on an inspection carried out in the Belene Prison, the OTPH Belene, the OTPH Veliko Tarnovo and the Svishtov Police Department, p. 6.

⁵⁰⁸ PSF, Annual and financial report of the Prison Service Fund in 2021, p. 72.

⁵⁰⁹ PSF, Annual and financial report of the Prison Service Fund in 2020., p. 60.

⁵¹⁰ Vratsa Prison, *Annual Report 2020*, p. 35.

⁵¹¹ PSF, Annual and financial report of the Prison Service Fund in 2021, p. 63.

prisoners were employed, and the most were in Plovdiv - 82⁵¹². Usually, the workshops are located on the premises of a prison or a CTPH. At the time of this research, in 2021 there was a printing workshop at the Sofia Prison, workshops for plastic modules at the prisons in Plovdiv and Pazardzhik, a carpentry workshop at the Pazardzhik Prison, workshops for the production of kitchen sponges and for decoration products at the Sliven Prison, metallurgical workshops that manufactured elements for bombs at the CTPH Atlant and the Plevnen Prison, etc. These are not long-term manufacturing operations, because they change according to the orders of the external customers.

The working conditions in these workshops were poor and there were many complaints of unachievable daily labor output rates from the prisoners. The results were low pay, very few days counted towards the reduction of the sentence and the employment of unpaid volunteers.

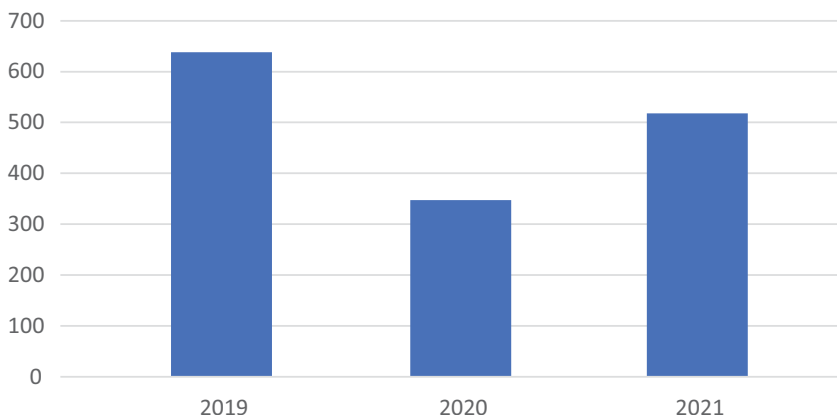
The PSF printing workshop is located on the premises of the Sofia Prison. It produces calendars, paper bags, folders and letterheads for the judiciary and prisons on behalf of an external company. The prisoners cut, fold and glue paper, put handles on paper bags, etc. There is only one printing machine and it is operated by an inmate. At the time of the visit, there were about 15-16 people working in the shop, two of whom were full-time supervisors. The monthly wages of the supervisors after deductions were about BGN 235 each. The other prisoners had two types of daily labor output rates: one for calculating the number of days counted towards reduction of the sentence, and the second, for the remuneration. The output rate for calculating days was lower than the output rate for remuneration, but it was not clear exactly how they were determined. A prisoner who worked in the workshop said that the average monthly wage was around BGN 50-60. For some workers half of the work was paid and the other half was unpaid. Other prisoners were „full-time volunteers“ and didn't get paid at all. All prisoners had a 6-day work week and received 26 days off the sentence when the daily labor output rates were met.

12.8. Prisoners hired out to private companies

Most paid working positions in prisons involve outsourcing labor to private companies. The companies must guarantee, at their own expense, healthy and safe working conditions and the required hygienic and security conditions for prisoners. The remuneration is paid to the PSF according to the current wage system (based on time or output), which in most cases equals the minimum wage. The workers receive 40 or 50% of this, depending on whether they are accommodated in a closed-type or open-type facility.

⁵¹² Ibid., p. 59.

FIGURE 13. **Number of prisoners hired out to private companies 2019 -2021**



Source: Annual reports of the PSF 2019 – 2021

The work most often involves manufacturing or commerce and is done at work sites outside of prison. Only inmates from open-type hostels can be employed, as their regime allows them to work outside the prison area without guards. At the time of our visit to the OTPH Vereya, there were 8 prisoners working at external sites - four working at a soft drinks company, three dismantling wooden pallets, and one or two working at a company that produces decorative candles. 37 inmates from the OTPH Pazardzhik worked in external sites - car washes, used car parts shops, a store and various construction and repair companies.

12.9. Working conditions

The working conditions in the majority of workplaces in penitentiaries accessed by the researchers were visibly poor and not in line with basic health and safety requirements. In some cases, the working conditions were visibly unsafe for workers. The researchers saw old and depreciated facilities and equipment, poor hygiene, lack of ventilation, heating and cooling of the rooms, insufficient lighting, and inmates working without personal protective equipment even in high-risk activities.

According to the penitentiary legislation, the working conditions of the prisoners must comply with the general labor legislation⁵¹³. All health and safety regulations applicable to non-prisoner employees also apply to prisoners⁵¹⁴.

⁵¹³ EPPDA, Art. 175, § 1.

⁵¹⁴ EPPDA, Art. 169, § 1.

In the absence of regular independent monitoring of working conditions in prisons, these rules are widely ignored. Below we provide a description of the situation in some of the workplaces visited during the field visits in 2021.

At the time of our visit, the workshop for plastic modules at the prison in Plovdiv employed 88 persons, who worked in poor material conditions. The rooms were large, deteriorated, very dirty and with broken windows, often replaced by sheet metal. The work involved a lot of dust and no heating was provided during the cold months. A prisoner from the Plovdiv Prison described the working conditions in the workshop as "terrible" - very cold and dusty, which is why he had left the job.

In the metal profiles workshop at the Varna Prison, prisoners made profiles from galvanized sheet metal for dry construction. The work involves carrying heavy rolls of sheet metal, cutting sheet metal with metal-cutting machines and folding it. Workers in the shop didn't have sufficient personal protective equipment - they didn't wear work clothes and protective equipment, such as gloves, work boots and ear muffs. In general, the workshop facilities and machinery looked old and depreciated. Prisoners said that they were working with machines whose use was prohibited.

The printing workshop at the Sofia Prison is located in a separate building in the courtyard of the prison. Hygiene was severely neglected. The sanitary unit for the workers was constructed out of concrete blocks in the corner of one of the rooms, next to the workplaces. Its door did not close tightly because the lock was broken. Inside there was no vent or window and the cement floor couldn't be properly sanitized. Overall, the room was extremely dirty. There is a printing workshop at the CTPH Kremikovtsi as well. The workshop, which is located in a shack in the yard of the hostel, had no sanitary facilities and no running water. Instead, there were separate sewage pits with no drainage, whose content was spilled directly into the yard around the building.

There are two workshops at the Pleven Prison, a carpentry shop and a metallurgical grinding workshop, where prisoners work on toll manufacturing. The research team was not allowed to visit the grinding workshop and for the duration of the visit the work in the shop was suspended. The prison management explained that the production in the workshop was secret. BHC was shown a letter from the contractor, which denied access to the workshop due to the high confidentiality conditions of the company's contract with its clients. As far as we could tell, the contract was related to the military industry. Inmates complained about the harsh working conditions in this workshop: dust, failure to provide protective clothing and equipment, failure to provide adequate medical assistance in case of accidents and it was not clear how their wages were calculated.

The carpentry workshop at the Pleven Prison is housed in a spacious hall. It was cold in the workshop on the day of the visit, the heating was one wood stove. Most of the prisoners wore military boots - a donation from the Swiss army. Others, however, wore ordinary sport shoes. Some wore gloves, others did not. None, however, had safety goggles on, even though work in the workshop involves cutting wood on machines, which throw sawdust and wood chips.

Among the inmates, the decoration workshop at the Sliven Prison is known as the "Gypsy workshop". The working conditions in this workshop were poor. The working room was not well lit, the air temperature was high and there was no ventilation. The sanitary unit was dirty and it leaked, the floor was concrete which couldn't be sanitized and there was no light. The NPM visited the workshop in 2021 and reported that the sanitary unit was in very poor condition. It made a recommendation to the prison governor to renovate.

Prisoners rarely complain about problems with working conditions for fear of being left without a job. On the other hand, there is a lack of systematic external monitoring of compliance with national health and safety work standards in places of detention. Between 2015 and 2020, the Executive Agency "General Labour Inspectorate" has carried out only one inspection in a PSF territorial division. The labor inspection found nine violations of the health and safety standards at the Vratsa Prison.

The BHC alerted the labor inspection and in January 2022 the agency reviewed the working conditions in a large number of PSF sites. It found a total of 115 violations of a long list of health and safety regulations. For example, an inspection of a workshop for the manufacturing of concrete items and a wooden pallet workshop operated by the PSF at the Varna Prison found 14 violations of the following acts:

- Occupational Health and Safety Act;
- Ordinance No. 7 from 23.09.1999 on the minimum requirements for occupational health and safety and in the use of work equipment;
- Ordinance No. ПД-07-2 from 16.12.2009 on the conditions and procedures for conducting periodic trainings and instructions of employees on the occupational health and safety rules;
- Ordinance No. ПД-07-3 from 18.07.2014 on the minimum requirements for the microclimate in the workplace;
- Ordinance No. 10 from 07.12.2004 on ensuring occupational health and safety when working with forklifts and electric forklifts;
- Ordinance No. 3 from 19.04.2001 on the minimum requirements for occupational health and safety when using personal protective equipment at work;

- Regulation for occupational health and safety when working with electrical equipment with voltage up to 1000 V.

12.10. Occupational accidents

The high number of work-related accidents is an indicator of systemic problems with ensuring healthy and safe working conditions for working prisoners. Information on occupational accidents in places of detention is not sent to the labor inspection, as required by the procedure under the general legislation, and consequently there is no independent investigation of the cases.

TABLE 20. **Recorded occupational accidents involving prisoners, 2017 - 30 June 2021**

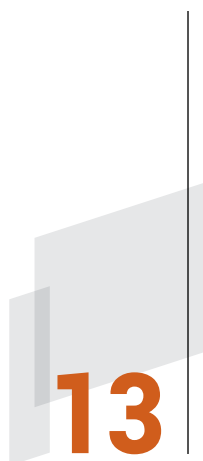
Prison	2017		2018		2019		2020		First half of 2021
	Worksites in the prisons	Outside worksites	Worksites in the prisons	Outside worksites	Worksites in the prisons	Outside worksites	Worksites in the prisons	Outside worksites	(The information provided does not clarify where the accidents were recorded)
Belene	0	1	0	0	0	0	0	0	0
Bobov Dol	0	1	0	1	0	2	0	0	0
Burgas	0	0	0	1	0	3	0	0	1
Varna	2	0	2	4	2	5	3	0	4
Vratsa	2	2	1	3	0	0	0	0	0
Lovech	0	8	0	1	0	0	0	2	2
Pazardzhik	0	0	0	0	0	1	0	0	1
Pleven	0	0	0	0	0	0	0	0	0
Plovdiv	3	1	0	2	0	0	0	0	0
Sliven	2	0	2	0	2	1	0	1	0
Sofia	0	1	0	0	0	1	0	0	0
Stara Zagora	4	0	3	7	2	11	4	5	10
Total	13	14	8	19	6	24	7	8	18

Source: PSF

In 2017, nine of the 27 recorded occupational accidents with inmates caused disabilities, in 2018 - 13 out of the 27⁵¹⁵. Between 2017 and 2020, there was one documented fatality due to an occupational accident involving an inmate working at an outside worksite. The accident happened in 2019 under the watch of the PSF's Stara Zagora division.

In the Varna Prison the researchers met a victim of a serious work accident in the workshop for production of profiles from galvanized sheet metal for dry construction. The immediate cause of the accident was a forklift maneuver performed by another inmate, who, in violation of regulations, did not have a license to drive the forklift. As a result of the accident, the victim had one of his legs amputated below the knee. The victim was granted a disability pension, as he lost the ability to work, not because of the occupational accident, but due to a general illness, which meant he got a lower pension. The reason is that prison workers are not treated as workers by the labor and social security legislation. Later, the prisoner successfully sued GDEP to pay him BGN 100 000 compensation for pecuniary and non-pecuniary damages „on account of the unlawful failure of the administration of [Varna] prison to ensure safe and healthy working conditions in [Varna] prison and to provide the necessary pre-operative and post-operative medical care of the injury from the accident [...] and the amputation of the lower part of the applicant's left leg".

⁵¹⁵ Information received by BHC under the Access to Public Information Act from GDEP by Decision No Л-5570/20.12.2019.



13

EDUCATION

Bulgarian law takes into account the participation in education, trainings and qualifications when determining the degree of correction and rehabilitation of prisoners. Prisoners attending school or other educational activities reduce the length of their sentence. Two school days are counted as three days of imprisonment. This makes education attractive to prisoners, but paid employment remains more important. For this reason, no study classes are organized in open-type hostels where prisoners have better access to paid employment at worksites outside the facility. The only exception is the OTPH Kazichene.

Students in prison receive the same degree as students outside - the educational standards and curricula are the same as in the mainstream schools. There are seven state schools operating in the penitentiary system in Bulgaria. They are organized and supervised by the Ministry of Education and funded by the government. The schools have branches in the closed-type hostels and in some of the open-type hostels. Depending on the prison, the schools offer education from 1 grade to 4 grade, from 1 grade to 7 grade or from 1 grade to 12 grade.

The number of students in prisons has been decreasing in the past years. At the beginning of the 2018/2019 school year, there were 1204 students, and two years later, at the beginning of the 2020/2021 school year – only 986. As a share of the average prison population, students were about 17% in 2018 and 15% in 2020. The 2020/2021 school year ended with 588 students. The lower number of students is due to both the decrease in the total number of inmates and the increase in the number of short-term sentences, including sentences under one year.

TABLE 21. Schools at places of deprivation of liberty and number of students at the beginning of the 2021/2022 school year

School	Prison	Grades	Number of students at the beginning of the 2021/2022 school year ⁵¹⁶
„Mito Orozov” Secondary School	Vratsa Prison	1–12	92
“St. St. Cyril and Methodius” Secondary School	JCFB Vratsa	1–12	24
„Dr Peter Beron” Secondary School	Bobov Dol Prison	1–12	72
„Dimitar Mitev” Secondary School	Lovech Prison	1–12	102
	Pleven Prison (branch)	1–4	24
	Belene Prison (branch)	1–7	26
„Argira Zhechkova” Secondary School	Sliven Prison	1–12	48
	Varna Prison (branch)	1–7	18
	Burgas Prison (branch)	1–7	75
	Debelt Prison Hostel	1–7	
“St. Ivan Rilski” Secondary School	OTPH Kazichene		232
	Sofia Prison (branch)	1–12	
	CTPH Kremikovtsi (branch)	1–12	
	Plovdiv Prison (branch)	1–4	45
“Pop Mincho Krastev” Secondary School	Stara Zagora Prison	1–12	207
	CTPH Cherna Gora (branch)	1–4	
	Pazardzhik Prison (branch)	1–4	21
Total:			986

⁵¹⁶ GDEP, *Annual Report 2021*, p. 33.

High schools offer vocational education in the following subjects: metal working, construction and finishing work, drywall construction, furniture production, indoor plumbing, tailoring, and clothing production⁵¹⁷. As vocational education lasts for five years, it is not clear how many prisoners manage to graduate.

In addition to education, schools have an important socializing and adjustment function. The environment is considerably calmer and safer and resembles more life outside prison. Prisoners had no school-related complaints and were respectful of their teachers.

The prison schools' buildings are generally well maintained and in good condition. The Stara Zagora Prison school was in the best condition of all the schools visited during the field monitoring. It is also the biggest prison school in Bulgaria. The 2020/2021 school year started with 208 pupils, distributed in 16 classes from 1st to 12th grade and 139 students successfully completed the school year. Out of the seven 12th graders, four took the state matriculation exams, and two graduated with a certificate in Bulgarian language and a vocational certificate. The school employs 27 teachers who teach the core subjects, including computer technology. The school organizes extra curriculum activities, and students may attend one of 12 interest clubs: Roma folklore, folk traditions, theatre, arts and crafts, sports clubs, etc. Prisoners may train for the professions of metalworker, woodworker and construction worker. The school building has four floors. They all appeared very well kept, clean and cozy. Students had many materials, the tables and chairs were in good condition and there were flowers, pictures and announcement boards. The school has a computer room, an events room and a modern gym. There are also two interactive whiteboards in two of the classrooms, donated by Norway.

The branches of the schools in other prison facilities are located in buildings not originally intended for schools. For example, the branch of "St. Ivan Rilski" Secondary School - Kazichene in the Sofia Prison is located in the prison yard, in an annex above storage rooms/garages. The classrooms are reached by a very steep metal staircase, which makes the building inaccessible for people with mobility problems. At the time of our visit in October 2021, there were between 1 and 4 students in each of the classes. Teachers explained that most missing students were sick or too lazy to come to school. There were no merged classes. The rooms are small, with two rows of desks, a desk for the teachers and a whiteboard. Some rooms have small screens that are used to project movies and presentations from a laptop. On the day of the visit the weather was cold and rainy, there was no heating in the classrooms and the students and

⁵¹⁷ GDEP, *Annual Report*, p. 33.

teachers were in their outwear. The school has no computer or other special rooms.

In 2021, a new training center, funded by the NFM, was opened in the Pazardzhik Prison. The center has 8 classrooms for 20 students each, a gym and a meeting room. The classrooms are equipped with tables, chairs and white boards. There is one exercise bike in the gym. The meeting room is furnished with a large round table with about 30 chairs and a screen. It was never clear what this center would be used for, given that the prison had only 14 students at the time.

Our observations suggest that despite the infrastructure in the prisons, prisoners face significant barriers to education. First, according to the current *Rules on the conditions for education, training and qualification of prisoners and accused in places of detention* of GDEP, prisoners with short sentences - less than 6 months as of 15 September, cannot be enrolled as students. Second, enrolment in school education after the beginning of the first term of the school year is restricted. Also, if a prisoner is placed in a prison or prison hostel, which does not offer the suitable level of education, transferring elsewhere is difficult. A request for transfer for educational purposes may be made only by 31 July. Persons placed in places of detention after that date must wait until 31 July of the following year to request transfer for educational purposes to another prison. More flexible conditions for access to education are needed in order to increase the benefits of education in prison. Access should not be linked to the length of the sentence and the time of entry in prison.

The annual report of the Sofia Prison for 2019 outlines a problem related to “establishing the level of completed education, as some of the persons wishing to join school have attended classes outside prison in the past, but some of the educational institutions have been closed or restructured. This problem has generated some tension, but by the end of October 2019, all received applications have been screened and processed”⁵¹⁸.

The prison curriculum, textbooks and teaching aids are not adapted for adult students. A teacher in the school at the Plovdiv Prison explained that she was teaching the primary course curriculum and that prisoners had to learn 6 revolutionary songs on the occasion of March 3 (the Bulgarian national holiday), as well as how to recycle and collect plastic bottles. Prisoners also collected bottle caps for an initiative for buying infant incubators. According to the observations of the research team, many of the students have special educational needs but the teachers are not qualified for such work. In the same school we observed coloring pictures hung on the wall by the blackboard. The

⁵¹⁸ Sofia Prison, *Annual Report 2019*, p. 17.

teacher explained that most of the students did not have fine motor skills and coloring helped develop them. She also gave an example of an inmate who had been „speechless” when he entered prison but then had made a lot of progress in class.

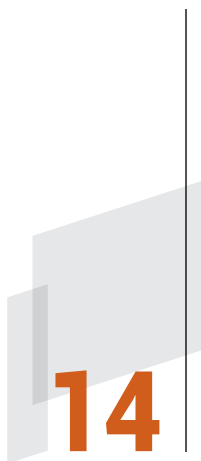
The quality of education is also a concern. In the Pazardzhik Prison, students from 1st to 3rd grade studied in a mixed class, offered by the local branch of the Stara Zagora Prison school. At the time of the visit there were 14 inmates in the class. According to representatives of the prison administration, students were not learning well and were unable to write an application or read after completing primary education. Due to the small number of students, in many places, especially in school branches, classes from different grades are joined together.

Inmates do not have access to digital educational resources and tools. During COVID-19, the prison schools used remote education. Teachers prepared lessons and tests, which were then given to the students by the social work inspectors.

According to the headmistress of one of the schools, prison education is “ignored”. She said that it should put an emphasis on specialized trainings, computer literacy courses and vocational courses. She added that prison schools should make use of project-based external funding, and that they should offer individual psychological support. She suggested such activities could be funded jointly by the Ministry of Justice and the Ministry of Education.

Foreign nationals, life prisoners, prisoners held in HSA and permanently locked pre-trial detainees do not have access to prison education. Other prisoners may be excluded from education on the basis of their risk assessment. A young prisoner complained that in the beginning of September 2021 he had submitted a declaration that he wanted to study. He expected to start school on the 15th September, but it turned out that he was not on the student list. Later, the social work inspector told him that he had not been approved for school because the prison governor deemed him a flight risk due to his serious offence and long sentence. Although there is a legal option for inmates in open-type hostels to study in ordinary schools in the vicinity of the hostel and to be enrolled in courses, it is not utilized.

Prisoners do not have the opportunity to enroll in higher education.



VOCATIONAL TRAINING

According to the legislation, prisoners may acquire professional qualification not only in prison schools, but also through courses organized by licensed companies and schools following programs approved by the Minister of Education and Science⁵¹⁹. On paper, vocational training courses in prisons, prison hostels and correctional facilities are organized by the head of social work department, who takes into account the available facilities and whether prisoners can learn the profession⁵²⁰. The training classes prisoners attend are counted as working days for sentence reduction. 16 hours of training are counted as three days of imprisonment⁵²¹.

In practice, the vocational training of prisoners is organized by the PSF. The Centre for Vocational Training of Prisoners was established for this purpose. The Centre is licensed to provide initial and continuing training for builders, welders, tailors, landscapers, animal husbandry workers, electricians, etc.⁵²².

Prisoners' participation in vocational training courses is encouraged but is extremely limited. Considering that the prison population consists mainly of people with no or low vocational qualifications, the percentage of prisoners receiving vocational training is negligible. The 2020 GDEP report recognizes that vocational training courses in prisons are extremely insufficient. Between 2017 and 2021, 340 prisoners attended 23 training courses⁵²³. In 2021, 42 prisoners

⁵¹⁹ REEPPDA, Art. 139, § 1.

⁵²⁰ REEPPDA, Art. 139, § 2.

⁵²¹ REEPPDA, Art. 134, § 2.

⁵²² PSF, Annual and financial report of the Prison Service Fund in 2021, p. 9.

⁵²³ BHC's calculations based on data from the 2017-2020 annual reports of the PSF, available at: <https://www.dpfzd.com/dokladi-i-otcheti/>.

were trained⁵²⁴, which is 0.7% of the average prison population that year. Nearly half of the prisoners trained in the last five years have received basic training certificates for construction laborers. There are also courses for welders, woodworkers and crop farm workers. Vocational training is mainly used to provide the labor needed for specific PSF sites or activities. For example, prison renovations funded by the PSF are primarily carried out as part of the practical training of construction laborers. During the five-year period under review, inmates from the Sofia Prison did not participate in any vocational training organized by the PSF. No trainings were organized in the Belene and the Bobov Dol prisons, nor in most of the prison hostels. NGOs also sporadically organize vocational trainings.

⁵²⁴ GDEP, *Annual Report*, p. 33



15

GROUP WORK IN PRISONS

Group work is another important element of the re-socialization of prisoners. Group work in prisons takes the form of correctional and therapeutic courses. Social work inspectors and the prison psychologists are responsible for organizing it, but external experts and volunteers may also be involved. The programs are approved by the director of the GDEP. According to our observations, the most frequently held courses include “Assertive behavior”, “Thinking skills”, “Anger management”, “Tolerance in prison, Tolerance in life”, “Short-term program for work with persons with drug addictions”⁵²⁵, “Work with prisoners with intellectual disabilities”, “Rehabilitation of vulnerable groups” and “Life outside prison”. Some recently introduced programs are “Positive fatherhood”, “The profession of a mother” and “Safe driving”. An example of programs organized by external organizations and volunteers are the Alcoholics Anonymous groups in the Stara Zagora and the Sofia prisons.

Data shows that very few prisoners are able to benefit from group work programs. There was a drastic drop in the enrollment in group work in 2020, due to the anti-epidemic measures restricting group activities. Alongside this, however, data on the programs and participants for 2019-2021 also shows significant differences between prisons, during and after the COVID-19 pandemic. The prisons in Bobov Dol and Pazardzhik had very few programs and participating inmates. The share of enrolled inmates in the Sofia Prison, which is the largest in the country, is also negligible.

One has to keep in mind that the figures in Table 22 refer not only to the prisons, but also to the prison hostels which are part of the respective territo-

⁵²⁵ For more on this program, see the chapter Prisoners in Situations of Vulnerability, subtopic Prisoners Using Drugs.

rial division of the GDEP. Our observations are that there are not so many correctional programs in prison hostels.

TABLE 22. Number of prisoners who have been part of group programs by prison and year (2019-2021)

	2019		2020		2021	
Prison	Programs	Prisoners	Programs	Prisoners	Programs	Prisoners
Belene	6	95	11	61	13	77
Bobov Dol	3	32	2	17	1	6
Burgas	10	110	10	96	21	624
Varna	5	97	11	256	10	227
Vratsa	9	182	0	0	4	32
Lovech	15	235	17	261	13	27
Pazardzhik	6	58	1	5	0	0
Pleven	5	65	7	56	9	56
Plovdiv	9	183	0	0	8	65
Sliven	4	99	0	0	3	20
Sofia	5	78	5	27	5	37
Stara Zagora	10	265	6	63	3	23
JCFB Vratsa	5	58	0	0	0	0
Total	92	1557	80	852	90	1244

Source: GDEP annual reports 2019–2021 r.

Staffing problems of the social work sector and the heavy workload of its employees are among the leading reasons for the insufficient group and individual correctional work with inmates in some prisons. These problems are discussed in detail in the 2020 annual report of the Sofia Prison:

The shortage of social work inspectors has led to a severe reduction in the programs that are essential tools in the correctional and educational process. Many recently hired officers have received neither initial, nor specialized training, nor are they trained to organize programs, which impedes the work. With the change in the legal framework, the administrative duties of inspectors have increased. These

duties include writing replies to the competent authorities regarding prisoners' complaints, preparing reports on the change of the legal status of prisoners, temporary suspension of the sentence under Article 447 of the Criminal Procedure Code, pardons, etc. The increased number of cases filed by prisoners for poor living conditions with the Administrative Court - Sofia City have put additional strain on the social work inspectors. All this led to a lack of time and resources for inspectors to spend more time with the prisoners⁵²⁶.

The vast majority of inmates interviewed for this research stated that they had not participated in correctional group work. An inmate from the CTPH Kremikovtsi said that the frequent changes of social inspectors are a problem for inmates. The changes mean that inspectors don't get to know the prisoners and this hinders their correctional work.

⁵²⁶ Sofia Prison, *Annual Report 2020*, p. 46.

16

LEISURE TIME ACTIVITIES

In order for prisoners to make meaningful use of their leisure time, the law requires that prisoners be provided with access to a wide range of activities: creative and cultural activities, sports, and religious support.

Typical creative and cultural activities are celebrations of national and religious holidays and other commemorative dates by making information boards, decorations, drawings, martenitsi (traditional Bulgarian small piece of adornment), painting eggs or organizing competitions for the most beautifully designed card, the best decorated lobby, the best written essay or poem.

Some prisons (Sofia, Burgas and Varna) have art clubs. Five prisoners participate in the art club in the Burgas Prison: three life prisoners and two prisoners with fixed sentences. Two of the participants were interviewed and they were very happy with their work in the art club, which counts as volunteering. An installation of flying gulls made by the prisoners in the art club is on display in the central entrance hall of the prison. Other inmates from the same prison were unhappy that only selected prisoners can access the art club. As of March 2021, the art club at the CTPH Kremikovtsi is no longer in operation. The 2020 annual report states that it closed due to lack of materials. Previously, prisoners made postcards, posters, martenitsi and posters for various occasions there. Inmates in the Pleven Prison are engaged in decoupage, and their pieces are sold at auctions organized by the Adventist Church. The money is donated to charity. In 2020, the club in the Bobov Dol Prison was discontinued because the club premises were turned into temporary isolation cells for prisoners in conflict situations.

Other leisure time activities include publishing prison newspapers (e.g. in Belene, Burgas, Vratsa, Pleven and Plovdiv prisons), staging theatre plays (e.g. in the prisons of Belene and Sliven). Most prisons have screening rooms - large rooms with a stage for concerts, film screenings, meetings with representatives of religious denominations and other group events. Occasionally prisoners from open-type hostels attend cultural events outside the prison.

Not all activities are tailored to inmates' ages and preferences, but prisoners have interest in them, as participation counts positively as a sign of correction and can be a cause for reward. The leisure activities are organized sporadically, with different frequency in different prisons, depending on whether they have the necessary financial and human resources. The lack of financial resources to provide supplies and materials, the lack of equipment and the outdated facilities are among the main hurdles to leisure activities. Some places also lack the necessary rooms for group activities.

2020 Plovdiv Prison Annual Report:

The prison faces a constant lack of funds for sports equipment, cultural and mass activities, interest clubs, etc. It would be good to find funds for performances by professional artists and talks with prominent public figures. We try to work with volunteers and gather materials, mostly from NGOs we work with, and the evangelical churches⁵²⁷.

The organization of leisure time activities faces difficulties also due to vacancies in the guard staff, which should ensure security at the events, as well as because of outdated computers and software, lack of printers, copiers, paper and ink.

The prisoners we met in the prison groups quarters spent their time mainly watching television, walking in the corridor and sleeping. Some prepared food and others played cards.

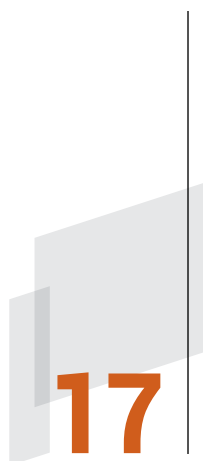
We visited the dormitories of groups 4 and 9 in the Belene Prison. Group 4 are inmates with more severe punishments and Group 9 are inmates with disciplinary offences. Only a few prisoners in these groups worked and they mainly did voluntary work. They left the prison group hostels once a day for meals and outdoor time and once a week to go to the library and do laundry. The hostel's kitchenette was where the prisoners preferred to spend some of their free time. There were no other common spaces for social interaction.

⁵²⁷ Sofia Prison, Annual Report of the Sofia Prison II Category 2020, p. 37.

There was a CCTV supervised quiet games room in the CTPH Cherna Gora. It had tables, a toilet and a sink. There was a schedule for accessing the room. During their outdoor time prisoners could play table tennis and use the weight bench and dumbbells, but there was no indoor gym. A maximum of 12 prisoners could play volleyball between 2:00 pm to 3:00 pm. There was no computer room in the hostel, but there was cable TV, which was paid by the inmates. Prisoners were visited by the priest from the Stara Zagora Prison and a volunteer from an Orthodox group from the town of Chirpan.

Each prison has its own arrangement regarding prisoners' access to TV. Some prisons have cable TV, which is paid by the prisoners. This is the case in Stara Zagora, where prisoners pay BGN 5 per month for 100 channels. In the Belene Prison they pay BGN 8 per person and the contract with the cable provider is signed by the prisoners' council. Other institutions, such as the Razdelna Prison Hostel, don't have cable TV and inmates can watch only the 4-5 broadcast networks through antennas.

Visits of religious organizations were suspended in 2020, when the COVID-19 pandemic broke out. At the time of the field research in 2021, the visits were not yet resumed in some locations. Orthodox priests that were members of the staff as in the Vratsa and Stara Zagora prisons continued to work with the prisoners during this period. Representatives of other religious denominations (Protestant, Evangelical, Catholic) also visited prisoners except during the pandemic. Most prisons and some prison hostels have chapels. A church was built in the school yard of the Stara Zagora Prison. Muslim inmates in the Pazardzhik Prison explained that the prison didn't provide them with space for religious services or where to meet the imam. Representatives of religious communities provide important moral support to prisoners, especially to life prisoners. They organize services, confessions, talks, courses, they collect donations and organize events for the prisoners.



17

LIBRARIES

The law posits that every prison, prison hostel and correctional facility should have a library. The libraries' book collection should be renewed periodically. Our observations are that while all closed-type institutions had libraries, not all open-type hostels did. There was no library in the JCFB at the Vratsa Prison, but only a bookcase, which, according to the interviewed boys, remained locked. Most libraries have an extensive book collection, but the books were predominantly old and on outdated topics. The book collections are renewed by donations from individuals. There is no access to digital books, newspapers and magazines or audio resources. Inmates are working as librarians.

Prisoners visit the library once a week on a schedule or during the outdoor time (in the Bobov Dol Prison). In Stara Zagora, prisoners do not have direct access to the library, but the librarian gives them the books through a window that overlooks the outdoor area.

None of the libraries we visited had current editions of the main international and national legal acts governing criminal and penal enforcement in a visible and accessible place, despite the explicit legal provision for this⁵²⁸. Also, libraries do not provide inmates with examples of applications, declarations, statements or complaints on common cases that they might come across in prison.

When we visited it, the library in the Sofia Prison appeared to be in good condition. According to the schedule, each prison group visited the library once a week. The librarian was a prisoner who was a part-time (4-hours per day) paid employee. He volunteers for the rest of the working day.

⁵²⁸ EPPDA, Art. 165, § 2.

Until the summer of 2018, alongside the general library, the Sofia Prison had a specialized law library that was unique for the entire penitentiary system in Bulgaria. It was visited by prisoners from all groups on a schedule different from that of the general library. The library was described as 'legal' because it had a laptop with legal software and because the librarian provided legal information and assistance to prisoners. The library had a computer, laptop, scanner and printer. The legal software was updated several times a year and provided access to databases of legislation and case law. Both the laptop and the software were provided by a private donation. The library also owned printed legal publications, incl. State Gazette. Office supplies, including printer paper were purchased by inmates.

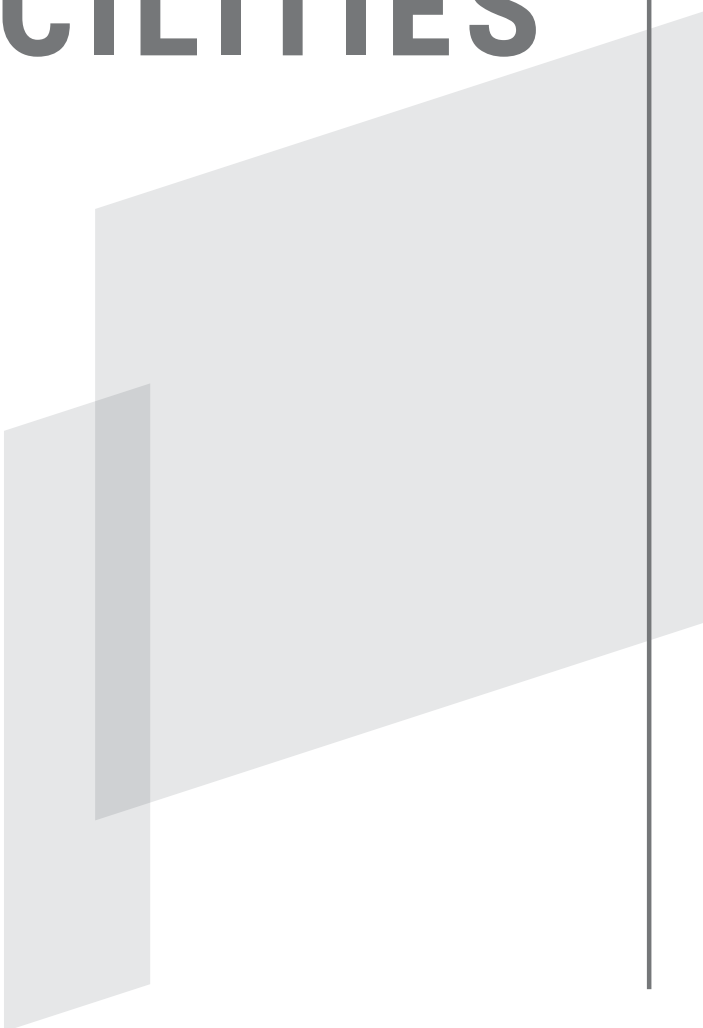
The librarian was an inmate with good legal knowledge. He helped prisoners with legal information, preparing documents, providing other information and contact details of institutions. The formal reason for closing the library was the need to use its room for other purposes.

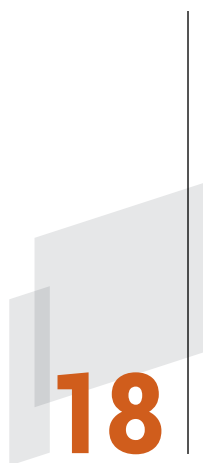
When BHC visited the prison in October 2021, the laptop with legal software was available in the general library, but the librarian did not have the knowledge or commitment to provide legal information. The library did not have any application and complaint forms. While there were some old legal publications, there wasn't a single copy of the EPPDA.

The Pleven Prison library looked well maintained and had an extensive book collection. Prison staff and local residents had donated new books. 60 prisoners regularly used the library. There wasn't any up-to-date legal literature in the library, but according to the librarian, there were up-to-date copies of the EPPDA and the CPC on his computer. Remand prisoners could not use the library, but the librarian had prepared a list of twenty books that could be delivered to the pre-trial detention cells.

The library in the CTPH Kremikovtsi is well organized and supplied with books and periodicals. In 2020, the BHC organized a donation campaign to collect books specifically for the Kremikovtsi library. The campaign donated contemporary fiction, educational literature, textbooks, encyclopedias, language dictionaries and popular science magazines. When we visited the library in June 2021, the legal literature purchased and donated by the BHC was in the library's storeroom. According to the librarian, books were given to inmates upon request and after assessment whether the reader would keep the books in good condition. However, the appearance of the books suggested that it was unlikely that they were given to prisoners on a regular basis.

PRE-TRIAL DETENTION FACILITIES





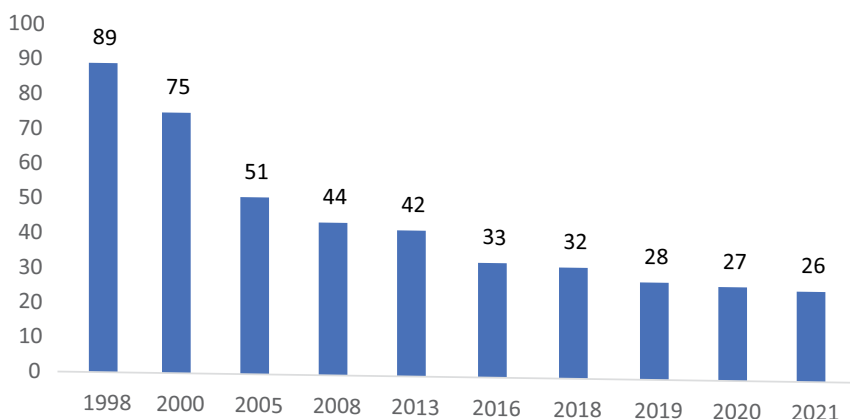
18 NUMBER OF PRE-TRIAL DETENTION FACILITIES AND CAPACITY

Pre-trial detention facilities are penitentiary establishments for persons detained on remand under the CPC. Women and men, adults and minors, Bulgarians and foreigners are held in the same facility, though in different cells. At the time of the research the only specialized pre-trial detention facility was the one on Major Vekilski St. in Sofia, which was used by the Specialized Prosecutor's Office. The operation of pre-trial detention facilities is united, managed and supervised by the regional services for the execution of penalties (RSEP) of the GDEP. The country is divided between seven RSEPs headquartered in Blagoevgrad, Varna, Veliko Tarnovo, Burgas, Pleven, Plovdiv and Sofia and each division is in charge of two to five pre-trial detention facilities.

Since 1998, the number of such facilities in Bulgaria has reduced nearly three and a half times - from 89 at the end of 1998 to 26 at the end of 2021 (Figure 14). This closing down process began in the late 1990s when management and control of pre-trial detention facilities was transferred from the National Investigation Service to the Ministry of Justice. Mainly less busy detention facilities in smaller settlements were closed, to optimize costs. The other closed pre-trial detention facilities were impossible to renovate and align with the minimal European requirements for lighting, ventilation, temperature, access to water and bathroom, outdoor areas, etc., due to structural or other reasons. In recent years the following pre-trial detention facilities have been closed down: in Dupnitsa - in 2018; in Razlog, Montana, Targovishte and Pernik - in 2019; in Yambol - in 2020. In 2021 the pre-trial detention facility in Gabrovo was closed down - it was the last subterranean facility in the country with some of the worst conditions of detention - with small cells, without bathrooms and running water in the cells, and without access to daylight.

On the ground of Article 46 of the EPPDA, in 2017 the NPM recommended closing down the pre-trial detention facility in Svilengrad due to the inhuman and degrading conditions of detention. During the BHC visit for the purposes of this research, the officers on duty in the facility reported that they expect it to close down and transfer to a sports hall in the town, owned by the Mol. This has not occurred yet.

FIGURE 14. Number of pre-trial detention facilities in Bulgaria by years in the period 1998 -2021.



Source: BHC reports on human rights in Bulgaria, 2016–2021

Along with closing down pre-trial detention facilities, in larger cities they are being relocated from Mol-owned buildings to local prisons. In the whole country, the pre-trial detention cells in Mol-owned buildings are in very poor conditions and cannot be renovated or repurposed. As of the end of 2021, seven pre-trial detention facilities were established in the prisons in Burgas, Vratsa, Sliven, Stara Zagora, Lovech, Pazardzhik and Pleven, and the facility in Smolyan is located in the OTH.

The CPT encourages the process of decommissioning the old pre-trial detention facilities, and in 2014 recommended the phasing out of pre-trial detention facilities and relocating accused persons and defendants to prisons. This recommendation to Bulgaria aimed to improve the living conditions of detention and to reduce overcrowding, as well as to provide a more adequate opportunity for detainees to spend time out of their cells. Relocating pre-trial detention facilities to prisons achieves these goals only partially because the overly strict detention regime remains unchanged - detainees still spend 23 hours per day in their cells without access to any meaningful activity.

Since 2017 several pre-trial detention facilities gained new separate buildings - these are the facility in Shumen, which in 2018 was relocated to a renovated building with funding from the NFM. The other facilities are in Dobrich and Blagoevgrad. New pre-trial detention facilities are under construction also in Petrich and Veliko Tarnovo. Construction work has commenced on a new pre-trial detention facility in Kardzhali but they were discontinued in 2021⁵²⁹.

According to the official data, the capacity of pre-trial detention facilities in Bulgaria is 1292 detainees (Table 23). The largest pre-trial detention facility in the country is the one on G.M. Dimitrov Blvd. in Sofia, with the capacity to hold 249 persons, and the smallest one is in Sandanski - with a capacity for 4 persons.

TABLE 23. Location and capacity of pre-trial detention facilities in Bulgaria at the end of 2022

Territorial service RSEP	Pre-trial detention facility	Number of cells	Capacity per 4 sq. m. (detainees)
Blagoevgrad	Blagoevgrad	10	16
	Sandanski	4	4
	Kyustendil	13	13
Burgas	Burgas (with the Burgas Prison)	10	42
	Haskovo	19	42
	Svilengrad	5	9
	Elhovo	14	39
	Sliven	20	40
Varna	Varna	19	59
	Silistra	9	11
	Razgrad	15	40
	Dobrich	12	48

⁵²⁹ GDEP, Annual Report 2021, p. 45.

Territorial service RSEP	Pre-trial detention facility	Number of cells	Capacity per 4 sq. m. (detainees)
Veliko Tarnovo	Veliko Tarnovo	11	22
	Razgrad	15	40
	Ruse	42	72
Pleven	Pleven (with the Pleven Prison)	9	46
	Vidin	10	23
	Vratsa (with the Vratsa Prison)	20	70
	Lovech (with the Lovech Prison)	6	24
Plovdiv	Smolyan (with the OTPH Smolyan)	7	21
	Stara Zagora (with the Stara Zagora Prison)	16	56
	Plovdiv (with the Plovdiv Prison)	60	180
	Pazardzhik (with the Pazardzhik Prison)	9	35
	Kardzhali	11	12
Sofia	Sofia, G.M. Dimitrov Blvd.	83	249
	Sofia, Major Vekilski Str.	30	80
Total:		478	1292

Source: GDEP

It seems however that the capacity of the facilities is artificially inflated by using a misleading calculation method - instead of the sum of the maximum capacity of each cell based on 4 sq. m. per person, the capacity is calculated by dividing the total area of all cells by 4 sq. m. Thus the capacity exceeding 4 sq. m. per person in cells is added up and divided into additional accommodation for detainees which is not actually available in the cells. The pre-trial detention facility in Svilengrad is a good example of this wrongful calculation method. The facility has 5 cells, each one with an area of less than 8 sq. m., which means that the total capacity is 5 persons. The official capacity of the facility, however, is 9 persons - calculated by dividing into 4 sq. m. the total area of all

cells - 36.55 sq. m. The situation in the pre-trial detention facility in Shumen is similar - the capacity based on the total area of all cells is 59 persons, however when complying with the standard of 4 sq. m. per person the maximum capacity of the facility is 39 detainees.

During the 2018 - 2021 period, the pre-trial detention facilities in Svilengrad, Vidin, Kyustendil and Blagoevgrad were constantly overcrowded. These facilities are located in border regions and they have a large share of foreign detainees. The pre-trial detention facilities in Sandanski, Veliko Tarnovo, Haskovo, and Ruse also suffer from regular overcrowding, as well as the facility on G.M. Dimitrov Blvd. in Sofia. In 2020 the latter reached overcrowding of 62 persons above capacity, and in the facility in Sandanski the detainees were four times more than the maximum designated capacity based on 4 sq. m. per person⁵³⁰. The management of the pre-trial detention facility on G.M. Dimitrov Blvd. in Sofia reported to the BHC researchers that the cells were frequently overcrowded because the courts and mainly the prosecutor's offices are not forbidden from sending detainees to facilities that are already operating at full capacity.

Another reason to exceed capacity is that some places are busier due to detainees being redirected from regions where the pre-trial detention facilities have been closed down. The BHC visit to Blagoevgrad revealed that because the pre-trial detention facility in Razlog was closed down and the one in Sandanski was too small, detainees from these regions and from Petrich were often sent to the facility in Blagoevgrad which resulted in overcrowding. The capacity of the pre-trial detention facility in Kyustendil is 13 people and at the time of the visit, there were 14 detainees. The facility became busier when the pre-trial detention facilities in Pernik and Dupnitsa were closed down. Overcrowding increased also with persons from the Bobov Dol Prison being brought for trial to Kyustendil. Most often they are transported from the prison on Monday and stay until Wednesday.

The pre-trial detention facility on the G.M. Dimitrov Blvd. in Sofia is the largest in the country by area and capacity. In recent years the capacity has decreased significantly. In 2016 it had a capacity of 415 persons. On the day of the visit, at 4 sq. m. per detainee, it was calculated for 249 persons but during the researchers' visit there were 252 persons detained.

One of the smallest pre-trial detention facilities is the one in Svilengrad - 9 persons. At the time of the visit, the facility was overcrowded with 13 detainees.

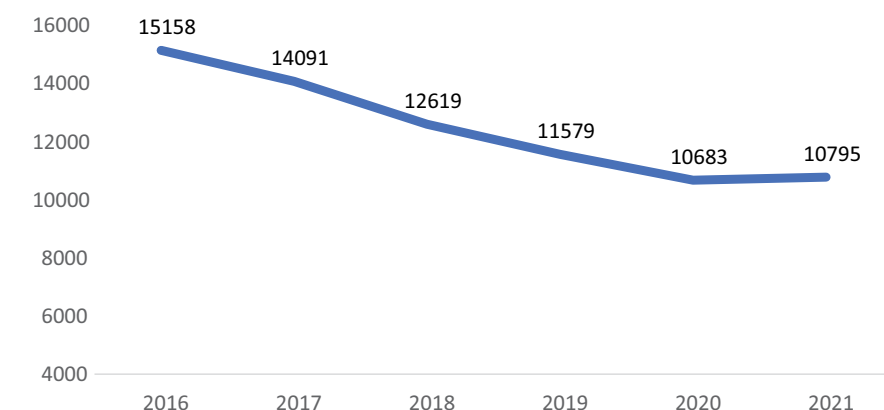
⁵³⁰ GDEP, Annual Report 2020, p. 47.

19

NUMBER OF DETAINEES AND DURATION OF DETENTION IN PRE-TRIAL DETENTION FACILITIES

The two main groups in pre-trial detention facilities are persons detained on remand and persons sentenced to imprisonment who have been brought under order by the court or the prosecutor to appear at trials, to participate in the investigation or other procedural actions - the so-called „delegation". From 2016 to 2021, the number of persons held in pre-trial detention facilities has decreased by the staggering 30% (Figure 15).

FIGURE 15. Number of persons who have been detained in pre-trial detention facilities in the period 2016 -2021

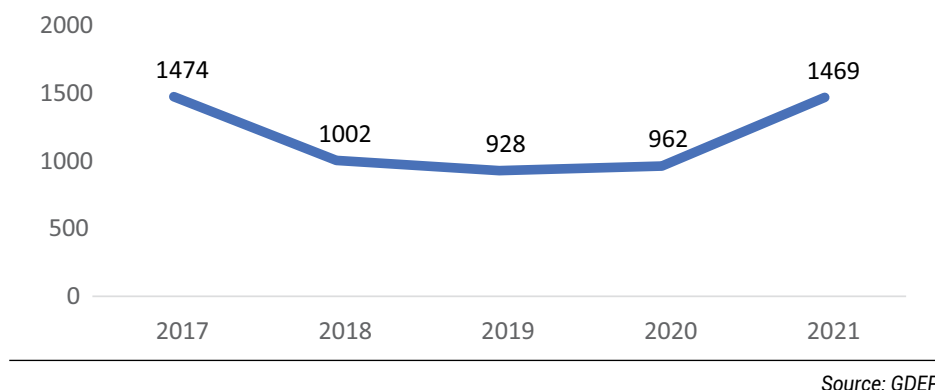


Source: GDEP. Annual reports 2016–2021

The reason for this drastic decline can be attributed to the reduction by almost half of the number of persons detained by delegation – from 8167 in 2016 to 4633 in 2021. This trend is inevitably influenced by the lower number of persons serving a custodial sentence. Another reason leading to the restriction of transporting inmates out of prisons and placing them in detention by delegation is the amendments to the procedural laws of 2021, which introduced the widespread use of videoconferencing as a means for participation in court hearings.

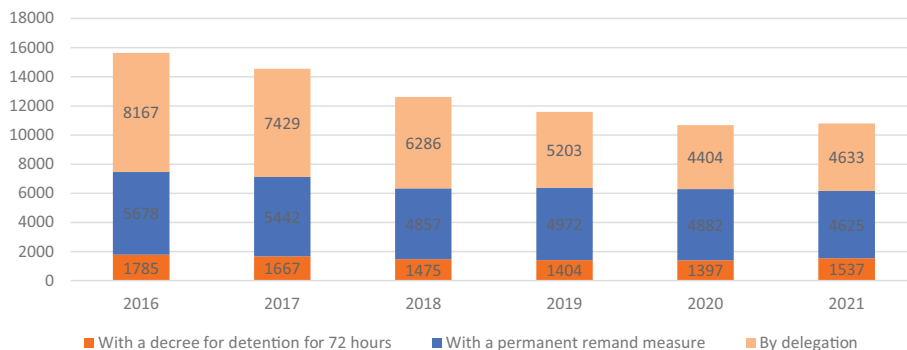
There are also constantly changing trends in the number of detained foreign citizens. Most foreign citizens are detained in facilities in border regions and accused of illegal border crossing at times of increased migration pressure and refugee waves.

FIGURE 16. Number of detained foreign citizens in pre-trial detention facilities in the period 2017 -2021



The number of detainees in custody with a permanent remand measure also decreased by nearly 20% on a six-year basis (Figure 17). This is a significant development, as those detained under court order are the category of persons who remain in pre-trial detention facilities for the longest periods.

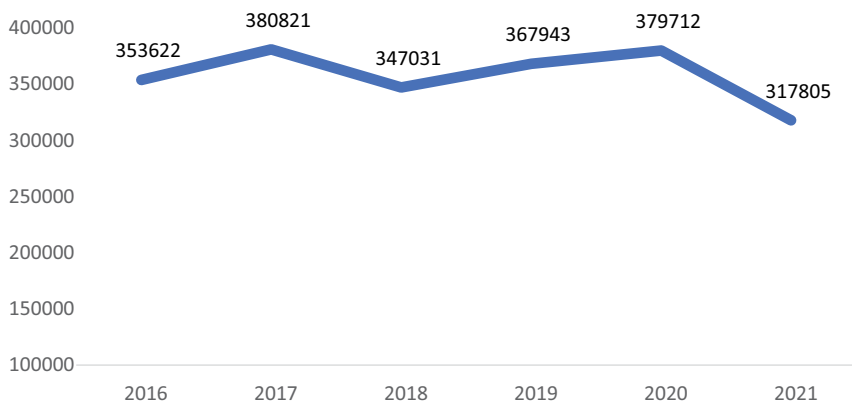
FIGURE 17. Number of persons who have been detained in pre-trial detention facilities by grounds of detention and by years (2016–2021)



Source: GDEP. Annual reports 2016–2021

Against this background, the total number of man-days in custody in pre-trial detention facilities also declined over the period under review, but the reduction of around 10% was not proportionate to the 30% reduction in the number of detainees (Figure 18). The explanation for this is that those detained by delegation, who have seen a marked fall of a third between 2016 and 2021, have short stays in the pre-trial detention facilities - several days - and the change in their numbers does not impact significantly the overall business of pre-trial detention facilities.

FIGURE 18. Number of man-days of detainees in pre-trial detention facilities in the period 2016 -2021



Source: GDEP. Annual reports 2016–2021

The CPC introduces time restrictions for the detention of accused persons in pre-trial proceedings - the remand measure may not last more than eight months if the person is charged with a serious intentional offence, and more than one year and six months if the person is charged with an offence punishable by not less than fifteen years of imprisonment or another, more serious penalty. In all other cases, the remand detention in pre-trial proceedings cannot last more than two months.

The statistics on the number of detainees according to their periods of detention for the period 2017-2021 reveals the lack of a convincing trend towards limiting prolonged stays in pre-trial detention facilities, which depends mainly on the activity of the investigating authorities and the complexity of the cases (Table 24). In 2021, over 2028 persons were detained in pre-trial detention facilities for more than two months, and 537 of them for more than six months. Considering the conditions of detention and the extremely restrictive regime in pre-trial detention facilities, these data are cause for some concern. A peak in the number of persons detained for more than two months - more than 52% of all with a permanent remand measure - was observed in 2020 when the activity of the courts was largely paralyzed due to the emergency. However, instead of amending the remand measures, the accused persons were left in pre-trial detention facilities for longer periods.

TABLE 24. Number of persons detained in pre-trial detention facilities with a permanent remand measure per duration of detention in the period 2017 - 2021

	2017	2018	2019	2020	2021
Detainees with a permanent remand measure	5442	4857	4972	4882	4625
Detained for a period from 2 to 6 months	1775	1235	1723	1790	1491
Detained for a period over 6 months	608	522	661	733	537
% of detainees over 2 months of the total number of detainees with a permanent remand measure	43%	36%	48%	52%	44%

Source: GDEP. Annual reports 2016–2021. The calculations are of the BHC

According to the data provided by the GDEP in 2021, the largest number of persons were detained for over six months in the pre-trial detention facilities in Sofia, Plovdiv and Burgas⁵³¹.

⁵³¹ GDEP, Annual Report 2021, p. 45.



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MATERIAL CONDITIONS

Under pressure from international and national human rights organizations, the living conditions in the pre-trial detention facilities have been improved over the past few years. As already noted, the key measures implemented were the closure of the last remaining underground detention facilities, including those in Slivnitsa, Pazardzhik and Gabrovo, and the relocation to new independent buildings or to prisons of some of the pre-trial detention facilities in the most appalling condition, such as those in Burgas, Dobrich, Pleven, Sliven, Stara Zagora and Shumen.

At the time this research was completed, the pre-trial detention facilities with the most unacceptable living conditions were the ones located in the buildings, which in the past belonged to other institutions, most often to the Ministry of Interior. They were built many years ago using principles and standards that are incompatible with the current minimum requirements for the treatment of detainees - no windows, toilets and running water in the cells, and no places to spend time outdoors. The pre-trial detention facilities in Svilengrad, Haskovo, Veliko Tarnovo and Vidin are the ones in the worst condition. They cannot be renovated because of their basic construction structure, and in some cases, such as the pre-trial detention facility in Vidin - due to the lack of title over the property. They must be closed down or moved urgently. The pre-trial detention facilities in Gabrovo, Botevgrad and Dobrich which had inhumane and degrading conditions during the on-site visits, were closed down or moved to new buildings in 2021-2022.

Gabrovo pre-trial detention facility (closed down in 2021)

The pre-trial detention facility in Gabrovo was visited by the BHC in June 2020. It is located on a basement floor (underground) in a building of the investigative service in the city. The underground floor is the basement of an old building from the first half of the last century.

All cells are dark, cramped, damp and unsuitable for major renovation or expansion. Apart from the one hour spent outdoors, detainees spend the other 23 hours of each day locked up in their cells. Each cell has small windows which however do not let any light in because they are at the ground level, they have thick bars and there is a metal fence installed on the street which limits access to the building. The only source of light in the pre-trial detention facility is the energy-saving light bulbs that emit a dim yellow-orange light. The air is stale, foul and damp. The air duct system is old and in the two cells visited by the researchers it was not operational; the windows could not be opened for ventilation. The cells have a cement floor which is porous and therefore impossible to sanitize.

Furniture in the cell is sparse, the little that is available is old and worn. It includes metal bunk beds. Their bedsprings have been replaced with thick metal sheets on which the mattresses are placed. Each cell has a plastic table. Some cells have plastic stools and a plastic shelf for storage of personal belongings. The cells are also equipped with bells which the detainees use to request a bathroom visit or communicate other concerns to the security staff. Four of the cells have a 12 V electricity supply for plugging in television or radio, and two of the cells don't.

The cells do not have a bathroom. Detainees can access the common toilet by alerting the guards with the bell. The toilet is a small 1 sq. m. room with a squat toilet and the entrance is in the security staff's room. This makes going to the toilet and using it inconvenient for both staff and detainees. Access to the shower is provided twice a week. Its entrance is located in the same room as the security staff.

The outdoor area is a small metal cage measuring about 1.80 x 5.00 m. in the inner courtyard of the building. The cage contains only a small bench. There is no roof to allow spending time outdoors when it is raining or snowing.

20.1. Capacity and size of the cells

In most of the visited pre-trial detention facilities cells are undersized and the number of beds exceeds the permissible occupancy as calculated based on 4 sq. m. per one detainee. This is a sign that pre-trial detention facilities are regularly overcrowded. There are between two and five beds per cell. Among the monitored facilities, the smallest cells (around 7 sq. m.) were those in the Svilengrad pre-trial detention facility, and the largest cells were those in the new pre-trial detention wing of the Vratsa Prison - around 25 sq. m.

The pre-trial detention facility in Haskovo has 20 cells according to the researchers' observation, and 19 according to official data. The cells are located in two corridors and contain 3 or 4 beds each - a total of 60 beds. According to official data the facility's capacity is 42 occupants based on 4 sq. m. minimum living space. The cells are of different sizes. The case law on compensation cases makes it clear that for example cell No. 15 has a total area of 8.06 sq. m. and its furnishings (three beds, one table and two stools) take up approximately 4.6 sq. m. Cell No. 9 has a total area of 8.37 sq. m. and its furnishings (three beds, one table and two stools) take up approximately 4.6 sq. m. Cell No. 13 has a total area of 12.18 sq. m. and is furnished with four beds, two tables and a stool which take up approximately 6 sq. m. of its area.

All cells in the Svilengrad pre-trial detention facility have an area of about 7 sq. m. and are furnished with two bunk beds each. This means that at full occupancy the area per one detainee is 1.63 sq. m. and 3.5 sq. m. with two occupied cells - in both cases, this is below the statutory minimum guaranteed living area per detainee. It should be noted that this is the area of the entire cell, including the area permanently occupied by the two bunk beds, which is approximately 4 sq. m. Judgements delivered on compensation for damage caused by inhumane and degrading conditions in the pre-trial detention facility in Svilengrad mention drastic cases of overcrowding of the cells - up to seven detainees in a cell.

The capacity of the pre-trial detention facility in Veliko Tarnovo is 22 persons, and it has 44 beds. At the time of the visit, there were 13 detainees but according to the staff sometimes there were up to 39 occupants. After the Gabrovo pre-trial detention facility was closed down, detainees from that region were redirected to the facility in Veliko Tarnovo, which increased the overcrowding. Thus, in 2021, the average number of detainees per day in this pre-trial detention facility was 42 people, which practically means that the detention is permanently under the conditions of 2 sq. m. of living area per person.

The official capacity of the pre-trial detention facility in Kyustendil, calculated on 4 sq. m., is 11 people, and the number of beds observed during the

BHC visits was 24. On the day of the visit, 14 people were detained in the facility. One of the cells visited by the researchers in the Varna pre-trial detention facility was around 13 sq. m., including the area of the bathroom, and there were five beds in total - two bunk beds and a single.

20.2. Furnishings and condition of the cells

At a minimum, cells should be furnished with separate beds for the detainees, with lockers for personal belongings, tables and chairs. However, apart from beds, other furnishings are not available in all pre-trial detention cells; when available, they are old and worn. Most of the cells are so small that more than half of their area is occupied by beds and there is no space to add other furniture.

Unlike prisons where bunk beds are rare, they are extensively used in pre-trial detention facilities. Only the pre-trial detention facility in Shumen was furnished with single beds out of all visited facilities. There were no triple bunks in any of the monitored facilities. In the pre-trial detention facility in Plovdiv, initially all beds were single, but due to the insufficient capacity of the 56 cells, a second bunk was added. The beds in all facilities are metal; instead of a spring, some have welded metal sheets on which the mattress is placed. According to GDEP data cited in court cases, the dimensions of the beds in Svilengrad are 192 x 80 x 160 (height) cm. The detainees are provided with mattresses which at the time of the research appeared to be worn and filthy.

The furnishings in one of the cells in the Veliko Tarnovo pre-trial detention facility consisted of two bunk beds, one small table and two stools secured to the wall and a plastic luggage rack with four drawers. There are wooden lockers out in the common corridor for keeping personal belongings that are not allowed in the cells. In the pre-trial detention facility in Plovdiv, there are small metal lockers under some of the beds, which have a door and can be locked if the detainee brings a padlock. Each cell has a low metal table with two backless chairs secured to the floor. There is a hanger for clothes on the wall. There is also a small TV stand and an antenna cable. Two of the visited cells in the Kyustendil pre-trial detention facility had no other furnishings apart from the beds and a plastic table (no nightstands or chairs). The explanation provided for the lack of furniture in the cells is that due to the nature of the flooring, the furniture cannot be secured to the floor as required, and therefore none is provided. Furnishings in the cells in the pre-trial detention facility in Svilengrad include two bunk beds and a small metal table with stools attached to the wall; there are storage cupboards in the corridor for the detainees' belongings and clothes. In the pre-trial detention facility in Shumen, apart from the single beds,

the furnishings consist of a metal table, two metal stools secured to the floor and walls, and lockers.

Flooring is varied. In some places, it is terracotta tile. In the new pre-trial detention facility in Shumen, the flooring is self-levelling epoxy resin. Older pre-trial detention facilities are located in Ministry of Interior buildings and since there have not been any investments in major repairs, the floors are in poor condition. For example, in the Haskovo pre-trial detention facility the floor was covered with torn linoleum with missing spots and therefore it could not be cleaned; in the pre-trial detention facility in Veliko Tarnovo two of the cells have terracotta tiles, and the rest have self-levelling flooring which is deteriorating. In the detention facility on Major Vekilski Street in Sofia, the floor in one of the cells was bare cement.

In general, the walls in the pre-trial detention facilities are plastered unevenly, painted with latex or bland paint and refreshed and repainted every few years. In most places, however, observations show that the walls are stained and with smoke residue, with traces of extinguished cigarettes and other dirt. In the detention facility on Major Vekilski Street in Sofia, there were leaks and consequent damage to the plaster in four cells. The staff stated that the source of the problem is in the Sofia Prison building: the corridor of the high-security area of the prison is located just above the second floor of the facility, and if an inmate takes a „bath” in one of the cells, the water seeps down and flows into the holding cell.

The bed bug problem in pre-trial detention facilities is widespread, most commonly believed to originate in prisons. Pest control is provided everywhere, however without lasting results.

The institution's budget provides only soap for personal hygiene; however, detainees in Svilengrad reported that they buy even their soap. None of the visited facilities provided any other hygiene products and supplies – razors, toothpaste and toothbrushes, toilet paper, or towels. The detainees receive a disinfectant for sanitizing the cells.

On admission, detainees are provided with a blanket, sheets and a pillow, but due to their poor condition, they mainly use personal bedding provided during visits. The facilities launder only officially issued bedding - either in a laundromat at the institution or through a contractor. During the field observation in the pre-trial detention facility in Varna, the researchers asked to see the clean bedding provided to the new arrivals but the staff did not have any. Detainees wash their own clothes. Most places reported that a basin or bucket, powder and soap are provided for handwashing clothes upon request. Detainees hand their washed clothing in the cells, in the common bathroom or the corridors. For example, in the Plovdiv pre-trial detention facility, the washed

clothes were hung to dry in the cells, on clotheslines hung between the beds, and in the facility in Svilengrad, the clothes were drying on the window bars in the corridor outside the cells.

No uniform practice was identified regarding the possibility of providing clothes and shoes to detainees. In some places, it was reported that the GDEP does not provide any. In the pre-trial detention facility in Plovdiv, there were tracksuits and sports shoes available for detainees who could not provide their own. In the Kyustendil facility officials said they had donated clothes that had already been worn though. Shoes are not provided there. Years ago, slippers were provided, but there are no longer funds for that.

Detainees can use small appliances - radios and televisions, operating on 12 V. In the cells of some pre-trial detention facilities, for example in Sofia, there is a 12 V power supply and accordingly detainees must get appliances that work with this voltage. In other places, such as the facilities in Kyustendil and Svilengrad, the cells are not supplied with 12 V electricity. Rather, 220 V current is supplied from sockets in the corridors, which the detainees must convert to 12 V with adapters provided by themselves. There is also 220 V of electricity in the pre-trial detention cells at the Vratsa Prison.

20.3. Lighting

According to data from the Bulgarian government provided to the Committee of Ministers of the Council of Europe in 2021 in connection with reporting progress on the implementation of the pilot judgment *Neshkov and Others v. Bulgaria*, there are still pre-trial detention facilities in the country without access to natural light - in Veliko Tarnovo, Svilengrad and Haskovo. Cells in these facilities lack windows entirely. There are many other places besides these, where daylight is so scarce that it certainly does not meet adequately the requirement for access to natural light. Artificial lighting is also generally dim and unsuitable for normal activities, such as reading. In determining the lighting standards in detention facilities, the REEPPDA refer to the applicable standards in public buildings; there is no designated standard for detention facilities.

In the pre-trial detention facility in Haskovo, cells are in two corridors - north and south. The north corridor does not have windows. The cells there have small exterior windows that cannot be opened and are sealed with perforated metal plates that keep out natural light. The cell doors have windows that face the corridor and can be opened. The south corridor has windows and better lighting. The cells there lack windows but natural light gets in through openings to the corridor. There are two fluorescent lighting fixtures above the

door for daytime lighting and a lamp with yellow light for nighttime lighting.

The pre-trial detention facility in Veliko Tarnovo also lacks windows in the sleeping quarters. The only natural light gets in through the windows in the corridor only if the cell door is open. Artificial lighting is provided by one fluorescent lamp above the door. When the research team measured the illuminance in the cell (on the pillow of the bed where the detainee is supposed to read), 6 lux was recorded, which is below the standards for any room.

In the pre-trial detention facility in Svilengrad, faint light comes into the cells from the corridor of the facility, through 60 x 60 cm. openings cut in the doors, partitioned with perforated metal sheets. Artificial lighting is provided by two fluorescent lamps in a nook above the door.

The cells in the Kyustendil pre-trial detention facility each have one window measuring 80 x 60 cm., but it is not on the outer wall, as there are one-meter wide corridors along the entire length of the floor on both sides and in practice the windows of the cells are adjacent to these corridors. This prevents sufficient natural light from entering the cells, and if there is no artificial lighting, the cells are dark. The lighting in the cells is provided by two light bulbs, one of which is a night light. The bulbs are installed in the openings above the cell doors, which are secured with metal bars and nets.

A good level of lighting is provided in the pre-trial detention cells in Shumen, where each cell has a 1.5 x 1.5 m. window that opens slightly with a metal grid that provides direct access to sunlight. Artificial lighting has a day and night mode. In one of the visited cells of the new pre-trial detention sector at the Vratsa Prison, which is located in the school building, there were two large 1.80 x 1.80 m. windows which provided sufficient lighting. In the other sector of the detention facility, however, in 2017 the NPM found that due to the construction of the sanitary facilities next to the window, the measured lighting level was 8 lux for daylight and therefore the artificial lighting was constantly on⁵³².

20.4. Heating

There are problems with heating in all pre-trial detention facilities located in buildings, which in the past belonged to other institutions. Since the heating in them is controlled by the owner of the building - usually the Ministry of Interior, after working hours and on weekends it is turned off and the detention facilities remain without heating. In the Kyustendil pre-trial detention facility

⁵³² Ombudsman of the Republic of Bulgaria, Report of the National Preventive Mechanism from inspections at the Vratsa prison; pre-trial detention facility - Vratsa; open-type dormitory Keramichna Fabrika; Juvenile Correction Facility Boychinovtsi; pre-trial detention facility- Montana, p. 5, available at: <https://www.ombudsman.bg/pictures/file/%D0%9D%D0%9F%D0%9C/doklad%20vraza-2.pdf>.

the heaters are installed in the walls. Since central heating is supplied from the police building, it works only during the administration's business hours - from 8:00 to 17:00 h. There is one space heater and one air conditioner in the corridor which are used during the rest of the time. With the cell doors closed, the heat can't reach the cells and most likely when the outside temperature drops, the cells are cold at night. Similarly, the pre-trial detention facility in Veliko Tarnovo shares central steam heating with the police building. Therefore outside working hours, on weekends and holidays, it is turned off. Three air conditioners in the corridor of the pre-trial detention facility are used when the central heating is off, but again they are more likely to provide heating only for the staff since with the cell doors closed, the heat can't reach the detainees. According to the management of the pre-trial detention facility in Varna, to ensure heating both on weekends and in the evenings on cold days, the facility has a service contract with the Ministry of Interior employee in charge of the heating equipment, who works for them during non-working hours for the Ministry of Interior. The Svilengrad pre-trial detention facility is heated by an air conditioner and an old radiator located in the corridor outside the cells.

20.5. Ventilation

The lack of fresh air in pre-trial detention facilities remains a serious problem and no sufficient steps have been taken to resolve it. Most of the places visited by the BHC did not have effective air circulation and refreshment systems. The building ventilation systems were old and inoperative or inefficient. As a result, the air in the cells everywhere was stale, stuffy and foul, including in the empty cells. Natural ventilation is often impossible due to the lack of opening windows. All cells in the pre-trial detention facilities are smoking cells, which exacerbates the problem, especially when there is overcrowding (which is often the case).

The ventilation system in the pre-trial detention facility in Veliko Tarnovo dates from the construction of the prison in 1982 and is not operational. The detention cells are located on the top floor and on hot summer days the roof above them heats up and the temperature in the facility becomes very high. The solid door of the cell is left open during the day, relying on air from the corridor windows to cool down the cells. There is a central ventilation system in the Svilengrad pre-trial detention facility, with five ducts - one for each of the cells, and in each cell there is a small opening in the ceiling through which the air circulation must take place. A small amount of fresh air can also come in through the door opening. The cells in the Haskovo pre-trial detention facility have no windows. They have air ducts from the ventilation system connected to a roof fan, which should ensure air circulation. The air duct openings are

covered with perforated metal sheets, which reduces the volume of circulating air. During the BHC visit to the pre-trial detention facility, the air in the cells was stale and foul-smelling, with no signs of the air ducts functioning effectively. The pre-trial detention facility in Kyustendil reported that a working aspiration device ventilates the premises by sucking in the stale air from the cells through a special opening in the ceiling. Nevertheless, the air was stale and foul. As of 2020, there was only natural ventilation through the corridor windows in the pre-trial detention facility in Blagoevgrad. There used to be an aspiration system but the duct openings in the ceilings of the cells were bricked up because the aspiration had not been used for many years and there was rubbish falling out of the openings.

The cells in the pre-trial detention facilities in Shumen, Plovdiv and on G. M. Dimitrov Blvd. in Sofia have windows that partially open at an angle to allow ventilation.

20.6. Bathroom and showers

Despite the improvements, 7 out of 26 pre-trial detention facilities in Bulgaria still don't provide detainees with access to running water and toilets in the cells. Although to a lesser extent, detainees still use bottles and buckets. These are the pre-trial detention facilities in Haskovo, Veliko Tarnovo, Svilengrad, Vidin, Kyustendil, Kardzhali, and Silistra. Moreover, the ratio of the number of toilets to the capacity of the facility is inadequate. In most places, the common bathrooms are in very poor condition, unsanitary and in need of complete renovation.

The Haskovo pre-trial detention facility does not have a bathroom or running water in the cells. There is one bathroom for the entire facility at the beginning of the corridors with sleeping quarters, near the administrative part of the facility. It consists of a room with two sinks, from which there is access to two separate stalls with squat toilets and another room with showers. According to GDEP data cited in court documents, detainees have access to the common bathroom according to an established schedule - between 06:00 and 08:00 and between 17:30 and 22:00. Although the researchers were not able to speak to detainees there, we learn from case law that plaintiffs in cases for damage due to inhuman and degrading treatment state that during their detention in this facility, they were forced to relieve themselves in a bucket in the cell in front of the other detainees. The tiles in the bathroom were blackened and layered with dirt. There are two water heaters of 150 liters each, as well as spare water heaters purchased during the renovation in 2019. The water in the showers is controlled by the guards from a room adjacent to the bathroom.

There are no toilets in the cells in Veliko Tarnovo pre-trial detention facility. The bathroom with two toilets, a urinal and shower, two sinks and two water heaters is located at the bottom of the corridor from the cells. From the entrance door of the common room, one could see a squat toilet with the door removed. According to the staff, it was removed for security reasons. When the toilet is being used, the guard steps aside. The second toilet is separated by a wall from the sink and cannot be observed from the outside. The toilet there is the sitting type. There is a shower on the ceiling of the same room.

There is one common toilet for the detainees and the staff in the Svilengrad pre-trial detention facility. Detainees signal their request to use the bathroom by knocking on the door. There are no bells in the cells. Many claimants in compensation cases allege that during their time in the Svilengrad pre-trial detention facility, they had to urinate into bottles because the security staff did not take them to the toilets at all times. The bathroom includes a common room with a sink, a mirror and a window, a bathroom with one shower and a squat toilet. Showering is scheduled twice a week. The common space in the bathroom is under constant video surveillance.

There are no toilets in the cells of the pre-trial detention facility in Vidin. Detainees must knock on the door to use the bathroom. The guards on duty complained that their job has become opening and closing cells and taking detainees to the toilet. There is one squat-type toilet. The shower is directly above the toilet hole - to use the shower, detainees have to step in the toilet. The bathroom is in poor overall condition, dirty with crumbling plaster and an unpleasant smell. The only access to running water is in the front room of the bathroom, furnished with two sinks. There are two water heaters as well. Showering is scheduled twice a week.

The toilet in the pre-trial detention facility in Kyustendil is at the very beginning of the corridor and is shared by the entire facility. Guards claim that access is provided every time detainees request it with the bells installed in the cells. There are two squat toilets in separate stalls. Next to them, there is a shower built into the ceiling. The sanitary conditions in the bathroom were very poor during the BHC visit. The washroom had two sinks, buckets and basins, as well as a clothesline for detainees to hang their laundry. Water for showering was heated by a 100-litre water heater. Access to the bathroom for showering was provided once a week, and on hot summer days sometimes twice a week.

In the Plovdiv pre-trial detention facility, every cell has a toilet partitioned with a wall up to the ceiling. When the facility began operation, the partition wall was about 1.2 m. high, and a few years ago the walls were raised to the ceiling.

The toilets are squat type, there is also a small sink with hot and cold water nearby. Hot water is available twice a day for one hour.

All the cells in the pre-trial detention facility on G. M. Dimitrov Blvd. in Sofia also have bathrooms that include squat toilets and small sinks located in the corner next to the door. Only ten of the cells which are used to house women and minors have toilets with seats. The toilet is separated from the rest of the cell by approximately 1 m. tall partition wall, which serves to limit visibility when the body is in a sitting/squatting position. However, this low wall does not provide sufficient separation of the toilet for sanitary purposes and does not provide sufficient privacy. In one of the cells, an additional barrier of old towels and sheets was placed over the 1 m. partition. On each floor at the beginning of the corridors, there are recently renovated bathrooms with two showers and two sinks, and boilers have been installed on each floor. Showers are scheduled twice a week for about 40 minutes per cell, including shaving and laundry time.

The bathrooms in the cells in the pre-trial detention facility on Major Vekilski Street in Sofia have running water, a cast-iron squat toilet and a sink. There is a partition wall which does not reach the ceiling. To prevent smells from the sewage system, the toilet drains are covered with improvised means, like a yoghurt container.

It is inexplicable why contrary to international standards the toilets in the cells of the newly opened pre-trial detention facility in Shumen are only partially surrounded by 1.60 m. walls, which does not allow for complete privacy and containment of foul odors. There is a small sink over the flushing cistern with constantly available hot and cold water.

20.7. Outdoor time

The minimum of one hour spent outdoors is the sole legally guaranteed opportunity for detainees to leave their detention cell during the day. It should be provided outdoors and allow adequate physical movement.

The Internal Regulations of Pre-trial Detention Facilities stipulate that outdoor time shall take place in a specially designated location in the detention facility between 8:30 and 18:00 h.⁵³³ However, the internal regulations also provide for another option, which is reality in several detention facilities but contradicts the law and international standards, namely outdoor time taking place indoors with access to fresh air or ventilation⁵³⁴.

⁵³³ GDEP, Order No. Л-1321/10.03.2020 on the internal regulations in pre-trial detention facilities, Art. 55, available at: <https://prisonreform.bg/zapoved-za-vatreshnia-red-v-arestite-na-gdin/>.

⁵³⁴ Ibid., Art. 55, item. 1.

According to data from the Bulgarian government, as of June 2021, 18 out of a total of 27 pre-trial detention facilities in the country had available places to spend time outdoors, 8 had places to walk indoors, and one had neither of the two⁵³⁵. This data does not reflect the actual situation accurately.

According to the BHC observations, the pre-trial detention facilities with places to spend time outdoors, which most closely approximate their purpose, are those attached to prisons, as well as the facilities in Plovdiv and on Major Vekilski Street in Sofia. There are three designated places to spend time outdoors in the inner courtyard of the facility on Major Vekilski Street in Sofia. Two of the sites, fenced off with metal mesh, were being used during the visit. Their dimensions are 12 x 5 m. In the pre-trial detention facility in Plovdiv, outdoor time takes place within three plots in the yard of the facility with a total area of 150 square meters. There is a bench in each plot and a small roof that does not cover the entire plot. Three sectors at a time are taken out to spend time outdoors (8 - 9 people).

The other places for spending time outdoors are actually inside the buildings of the pre-trial detention facilities - terraces or parts of the roof which get fresh air but are surrounded by several solid walls and are relatively small. For example, the place to spend time outdoors in the new pre-trial detention facility in Shumen is a 30 sq. m. terrace. In the detention facility on G. M. Dimitrov Blvd., outdoor time takes place in a total of 7 rooms on the roof of the building. Their dimensions are about 5 x 4 m., with massive bars on top instead of a ceiling. In other pre-trial detention facilities, the outdoor time places are metal cages. There is one in the courtyard of the pre-trial detention facility in Kyustendil. It measures about 4.20 x 4.20 m., with sheet metal on both sides and bars and mesh on the other two sides and the top side. There is a telephone installed in the cage that does not work.

From the institutions visited by the BHC, there were indoor rooms for walking in the pre-trial detention facilities in Haskovo, Blagoevgrad, Vidin, Veliko Tarnovo and Ruse. The walking room in the Haskovo pre-trial detention facility has an area of 14.5 sq. m. and two windows that are kept open. Detainees can stay there up to one hour per day according to the schedule - one cell per hour. In the pre-trial detention facility in Veliko Tarnovo, the detainees spend one hour outside their cell in a room with dimensions of 6 x 4 m., with two windows, and are brought outside two cells at the same time. The space for outdoor time in the pre-trial detention facility in Blagoevgrad, operating as

⁵³⁵ 1411th meeting (September 2021) (DH) – Action plan (07/07/2021) – Communication from Bulgaria concerning the case of Kehayov v. Bulgaria (Application No. 41035/98) and Neshkov and Others v. Bulgaria (Application No. 36925/10), Annex 2, available at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)698revE](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)698revE). (in English)

of 2020, is a simple empty room with dimensions of about 3 x 4 m. with the window frames removed and replaced with larger and smaller bars. At an earlier stage, there was a plan to build a place on the roof but this did not happen for financial reasons.

The pre-trial detention facility in Svilengrad does not have any space for walking, indoors or outdoors. Detainees can spend one hour a day in the detention facility corridor with an open window.

During the outdoor time, the detainees go around in a circle, sit on a bench or lean against the walls. Regardless of the type of place - outdoor, semi-indoor and indoor, no exercise equipment or other sports equipment was provided in any institution. A gym was built on the first floor of the building where the pre-trial detention facility in Shumen is located. Despite the initial intentions, it is not used by detainees, but only by the staff in the pre-trial detention facility and by the two persons serving their sentence there. The officials explain that the gym is on the first floor and it is not convenient for detainees to move from the third floor to the first floor to use it.

20.8. Activities

While the material conditions in the pre-trial detention facilities are gradually improving, no positive changes have been observed in terms of the detention regime. Detainees are kept in permanently locked cells where they spend 23 hours a day. Since its first visit to the prisons in 1999, during every observation of the penitentiary institutions in Bulgaria, the CPT repeats the same recommendation to the Bulgarian authorities, namely to organize the prisoners' regime in such a way that they can spend at least eight hours a day outside the cell in meaningful activities - work, training, sports and other activities. For years, national authorities have completely ignored this recommendation. Moreover, in the newly established detention facilities, where facilities for group activities could be made available, no steps are taken to do so. The problem is also present in the pre-trial detention facilities moved to prisons, where there is a basic opportunity to provide activities, but the regime of the detention cells, which are locked for 23 hours a day, remains unchanged.

According to the approved list of permitted items in custody, detainees have the right to keep with them and use televisions up to 19 inches (with a CRT screen) or up to 24 LCD (with LED or plasma screen) with voltage rating of up to 12 V; portable radio receiver and audio player with voltage rating supply up to 12 V; electronic games⁵³⁶. Finding 12V TVs and radios is a challenge, and as some

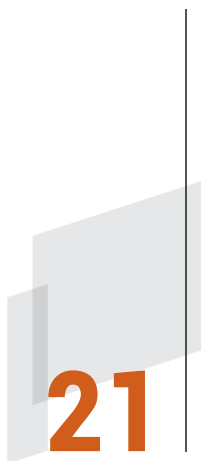
⁵³⁶ Ministry of Justice, Order No. JIC-04-747/08.12.2020, approving a list of personal belongings, items, food products that detainees under the NPC and other persons housed in detention facilities, item 5, g), h)

prisons only run 220V, it is the inmates' responsibility to provide adapters to convert the 220V to 12V. In addition, most detainees do not have the necessary finances to provide such appliances. Thus, a rather limited number of TVs and radios were noticed during the on-site monitoring. Most places reported that they provide cable TV free of charge to those who were able to obtain TV sets. Video games were not seen in any of the pre-trial detention facilities.

Other permitted items that may be used to fill the time are textbooks, books, newspapers and magazines, chess, backgammon, cards, dominoes, checkers and Ludo⁵³⁷. Detainees do not have access to computers and electronic resources.

and i) may receive, use and keep with them or in designated places for the purpose, available at: <https://prisonreform.bg/spisak-na-razreshenite-lichni-vesthi-i-hrani-za-zadarzhanite-pod-strazha-v-arestite-2022-g/>.

⁵³⁷ Ibid., p. 6, e) and k)



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MEALS

As in prisons, meals in pre-trial detention facilities are provided three times a day: breakfast, lunch and dinner. Depending on the location of the facility, the food is prepared by the kitchen of the prison or prison hostel located in the same city (for example, the pre-trial detention facilities in Plovdiv, Sofia, Veliko Tarnovo, Varna, Vratsa) or by a catering company (for example, Svilengrad, Haskovo, Kyustendil, Blagoevgrad, Vidin). Meals in detention facilities attached to prisons and near prisons are served directly from the institution's kitchen three times a day. When it is necessary to transport food from the prison to the detention facility, this usually happens twice a day before noon, the food that is given for lunch is brought as well, and before dinner, the food for dinner and the next day's breakfast is brought (for example, in the detention facilities in Veliko Tarnovo and on G.M. Dimitrov Blvd. in Sofia). The food is delivered in large containers and in the pre-trial detention facilities it is divided into individual portions and distributed in the cells. On the day of the BHC visit to the Varna pre-trial detention facility, the researchers witnessed food being portioned and distributed among cells by detainees who were not equipped with gloves and hats. Food from catering companies was delivered three times a day in individual portions in disposable plastic boxes. Contracts with the catering company were concluded by the GDEP. The researchers' observations were that the portions were small. Some facilities had microwave ovens for reheating food.

With both options for food preparation and delivery, detainees have the option to select a certain diet – for example, pork-free, vegetarian or other. We learned only about the pre-trial detention facility in Plovdiv that Muslims are not provided pork-free food. Special menus can be prepared for medical dietary requirements, depending on the diagnosis. According to the information

collected during the field monitoring, in 2020 the price of one day's worth of meals varies between BGN 4 and 7, and catering is more expensive.

In all cases, meals are taken inside the cells, most often in the beds, as the furniture rarely includes tables and chairs. In some pre-trial detention facilities, such as those in Haskovo and Svilengrad, detainees have the right to use kettles for heating water outside their cells, in a place designated by the guards.

Detainees can also get food during visits; they are entitled to two food parcels per month with a maximum amount of 5 kg of groceries and 5 kg of raw fruits and vegetables. Pre-trial detention facilities at the prisons provide access to the prison shop for buying food and other permitted items. In the other cases, there is an organization to buy food, cigarettes and other items at the detainees' request and at their own expense on weekly basis.

In the corridors of some pre-trial detention facilities (for example in Kyustendil, Shumen and Blagoevgrad) there are refrigerators where prisoner can keep their food.

There is no running water in most of the cells, and prisoners pour their own drinking water from the taps in the communal bathroom and store it in plastic bottles; they can also buy mineral water.

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MEDICAL CARE

Medical care in pre-trial detention facilities is provided by one or more medical specialists employed or hired for this service, most often one associate physician. The RSEP- Sofia has the largest team - three physicians, three nurses and a dentist - which serves the two pre-trial detention facilities in the city. The facility on G.M. Dimitrov Blvd. is also visited by specialists from external medical institutions - a dermatologist, a cardiologist and a neurologist from the Ministry of Interior Hospital who have a contract with the GDEP. For examinations by any other specialists, including ob-gyn and psychiatrist, detainees are taken to external medical facilities. There are two associate physicians employed in the Shumen pre-trial detention facility. There is a physician and an associate physician employed by the RSEP - Plovdiv; in addition to the pre-trial detention facility in Plovdiv, they also serve the one in Kardzhali. Pre-trial detention facilities at the prisons are served by the staff in the respective medical centers.

Medical professionals staff the facilities during weekdays, and at night and on weekends they rely on emergency and urgent care centers. On the days of the visits by the BHC, the medical personnel in the pre-trial detention facilities in Vidin, Blagoevgrad and Dobrich were not at work.

There is no permanently present medical practitioner in the detention facility in Svilengrad. Once a week, an associate physician from the detention facility in Haskovo comes to visit. Medicines are administered by the security staff as directed by the associate physician.

Upon admission to a pre-trial detention facility, a medical examination should be carried out on each detainee, a card should be drawn up and, if there are any identified injuries, they should be entered in the register of traumat-

ic injuries. No HIV or hepatitis C tests or other tests are done. In the absence of a medical specialist serving the pre-trial detention facility, the examination is carried out by a general practitioner or by a specialist from the emergency medical center.

In most places the reported practice was for medical personnel to do a round of the cells in the morning, ask detainees if they have any health complaints, and if there was anyone who wished to be examined, they make a note in the examination book. In the pre-trial detention facility on G. M. Dimitrov Blvd. in Sofia, which is significantly larger than the rest of the facilities in the country, bookings are made by the floor guard on duty, with an average of about 15 detainees booked per day. Detainees in the Varna pre-trial detention facility have scheduled examinations - the distribution is by cells, and the examination days are Monday, Wednesday and Friday.

If necessary, pre-trial detention facilities turn to the emergency medical centers for assistance. For example, in the outpatient diary for emergency care in the pre-trial detention facility in Shumen, it is noted that emergency care was provided in cases of kidney crisis, complaints of abdominal pain, and vomiting.

Dental care is provided in a variety of ways. Of the visited pre-trial detention facilities, the only one with a dental office was the one on G. M. Dimitrov Blvd. in Sofia, which also serves the other pre-trial detention facility in the city. Detainees in the pre-trial detention facilities in the prisons use the dental services organized for prisoners; the detainees in the Plovdiv facility visit the dentist of the Plovdiv Prison since the two institutions are nearby. Regarding the facilities in Gabrovo and Blagoevgrad, we learned that they had contracts with outside dentists and take detainees to their offices.

By law, detainees receive health-insured person status from the moment of their detention, but in practice this happens from the month following their placement in detention. In the pre-trial detention facility in Kyustendil, the delayed start of health insurance for newly admitted persons was deemed the main issue with the medical care of detainees. The staff there explained that a person detained at the beginning of the month remains uninsured until the end of that month and their registration as an insured person is from the first day of the following month, which prevents the use of NHIF-paid services for a long period. For such detainees, the emergency medical assistance service mechanism is used again.

Most detainees have officially assigned general practitioners who issue referrals for diagnosis and examination by specialists. The facility's management reports that the general practitioner assigned to the detainees in the Veliko Tarnovo pre-trial detention facility comes when needed, and, according

to the associate physician serving the detention facility, the GP does not visit the facility, but rather issues referrals for specialists or treatment „remotely“. based on the information the associate physician supplies over the telephone. She also confirmed that the delay in registering detainees as insured persons is an issue and added that this does not delay examinations and medical interventions because doctors in the city are familiar with the detention facility practices and know that payment for medical services will come at a later date. At the time of the BHC visit, the detainees in the Varna pre-trial detention facility did not have an appointed general practitioner. In practice, the associate physician refers patients to a specialist without issuing a referral. It was explained that specialists can check the health insurance status of patients and therefore there are no problems arising with a lack of referral. Detainees in the Kyustendil pre-trial detention facility have a designated general practitioner, but it was noted that the faster way to secure an examination without a referral from a specialist, is again through the Emergency Medical Centre, and since there are different specialists in the general hospital, the person referred for an emergency examination can be taken to the appropriate office.

To be taken out for examination by a specialist or hospitalization, special permission of the prosecutor or the court is required, depending on whether the case of the detainee is in the pre-trial or judicial phase. For this purpose, the medical officer of the pre-trial detention facility sends a written motivated proposal to the relevant authority. The researchers have reports of cases where securing the detainees' participation in procedural actions took precedence over their health needs. A review of the relevant case law also indicates that the court has refused to apply the preventive remedy to complaints of inhuman and degrading treatment arising from a prosecutor's refusal to continue the treatment of an accused in an outside treatment facility⁵³⁸.

The possibilities of providing drugs in pre-trial detention facilities as well as in prisons are very limited. The associate physician at the Veliko Tarnovo pre-trial detention facility explained that when a specialist prescribes medication, it is at the expense of the detainee. Only after an assessment of their financial situation deems that the person cannot afford it, a generic version of the prescribed medicine provided by the medical center in the facility. According to the associate physician in the pre-trial detention facility in Varna, she has a budget of BGN 120 per month for medicine.

Medical care for detainees with addictions is a problem. The pre-trial detention facility in Plovdiv reports that in recent years since heroin use has de-

⁵³⁸ Decision No. 264 of 10.01.2023 under admin. case No. 11698/2022 of the Administrative Court - Sofia-city.

clined, there have not been any detained drug addicts in a serious condition and withdrawal. They had to consult with a psychiatrist and in case of deterioration, detainees were sent for treatment to the specialized hospital in Lovech.

Few cases are recorded in the registers of traumatic injuries in pre-trial detention facilities kept by medical specialists. On average, 2-3 cases are registered per month in the pre-trial detention facility in Plovdiv - mostly injuries identified during the admission of detainees. According to the associate physician so far there have been 20 cases this year and there are no instances of use of force by guards against detainees. In the Registry of Traumatic Injuries in the Kyustendil pre-trial detention facility for 2019, there is only one case of an injured person being admitted to the facility. The injury was noted to have been the result of an altercation with other individuals before being arrested by the police. There is not a single case registered in the Gabrovo pre-trial detention facility. In the facility on Major Vekilski Street in Sofia, no cases have been reported of detained persons with signs of violence or torture. There is no register of traumatic injuries in the facility in Svilengrad because according to the guard on duty, there are no such injuries.

Eight cases of traumatic injuries have been registered in the Varna pre-trial detention facility from 2017 at the time of the BHC visit. The associate physician there reported with concern that until 2019, there were many cases of accommodation of detainees after being beaten by the police. In all identified cases, she notified the prosecutor's office, but in none of them did the preliminary checks lead to pre-trial proceedings against a police officer.

In general, from the information collected during this research it is clear that the cases of food refusal and self-harm are few. According to medical specialists at the Shumen pre-trial detention facility "violence and harm, as well as deaths and self-inflicted injuries, are a thing of the past". The biggest number of such cases were registered in the Kyustendil pre-trial detention facility - 11 refusals of food and two instances of self-harm which were demonstrative according to the assessment of the staff there. Most often, food refusal occurred due to prolonged detention in and lack of procedural actions.

The most recent death in the Vratsa Prison pre-trial detention facility was the self-hanging of a female prisoner in 2018. In January 2020, a 50-year-old detainee died in the pre-trial detention facility in Kyustendil from a heart attack, reportedly without any prior heart issues. In April 2020, there was one death in the Blagoevgrad pre-trial detention facility of a detained person aged about 40, a drug addict who died in his sleep. In 2021, there were 6 deaths in total in all pre-trial detention facilities across the country⁵³⁹.

⁵³⁹ GDEP, Report of the General Directorate for the Execution of Punishments at the Ministry of Justice in 2021, p.

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DISCIPLINARY PRACTICES AND ISOLATION

58.

Violations of the internal order are fewer in pre-trial detention facilities than in prisons, and disciplinary practices are poorly developed. Only the following disciplinary measures can be imposed in pre-trial detention facilities: „written warning“, „extra sanitation duty“ and „withholding a food parcel“. The penalty „isolation in solitary confinement“ is not applied, which is understandable, given that the regime in pre-trial detention facilities resembles that in solitary confinement. In 2019 there were no disciplinary punishments in the Kyustendil pre-trial detention facility. The practice in the Plovdiv pre-trial detention facility is to impose a total of three punishments for violations - a written warning, extra sanitation duty and withholding a food parcel, but the latter is usually for a short time - most often for a week. The pre-trial detention facility in Varna does not use isolation or withholding a food parcel as disciplinary sanctions, they use a reprimand. In the detention facility of the Vratsa Prison, it was reported that four „reprimand“ sanctions were imposed for committed violations under the EPPDA - provoking violence and unregulated contact. Before imposing sanctions the detention commander holds meetings with the offender. The Gabrovo pre-trial detention facility reported that in recent years no solitary confinement has been imposed, but if necessary, the two cells that do not have 12 V electricity can be used for solitary confinement.

Separate cells are used for solitary confinement of accused persons and defendants under Art. 248, § 1 and 2 of EPPDA. The regime of these persons in solitary confinement does not differ from the regime of other detainees, but the increased precautions require more frequent monitoring by the officers.

During the state of emergency due to the COVID-19 pandemic, newly detained persons were isolated in solitary cells for 14 days. In the facility in Svilengrad, the isolated detainees were only allowed to leave their cells to use the bathroom, but not to spend time in the corridor which is used for outdoor time.

24

CONTACTS WITH THE WORLD OUTSIDE

24.1. Visitation

Detainees are entitled to two family visits per month, each lasting 40-45 minutes. Only the pre-trial detention facility in Vidin reports that four visits per month are allowed. All family visits are held without the possibility of physical contact, regardless of the specific case of the detainee - age, sex, health status, identified safety and security risk, etc. Most places have family visits on weekends, without a specific schedule. Some pre-trial detention facilities are an exception (for example in Shumen, Varna and Plovdiv) - a phone call is required to book a date and time for visitation. Visitation rooms are equipped with a glass or plexiglass partition and bars, the detainees and their relatives stand on the opposite sides and talking happens over the telephone. Several visits take place at the same time; each detainee can have up to four visitors, and if they are relatives, there is no limit. In all cases a guard monitors and listens to the visitations and there is video surveillance in most visitation rooms.

During visitation, detainees can receive a food parcel as well as other permitted items - clothes, bedding, appliances, etc. Immediately after placement in the facility, detainees are allowed one extra parcel so they can get essential items from their relatives.

The visitation room in the Shumen pre-trial detention facility has 5 slots for detainees. The room is bright, clean and air-conditioned. The place for visits with relatives (and defenders) in the Svilengrad pre-trial detention facility is at the entrance. It is the actual foyer of the facility, around 2 sq. m., partitioned in the middle with a metal lattice door, covered with an additional transparent

PVC panel. Detainees and visitors stand on either side of the lattice, with no seating or tables. Visitation in the Kyustendil pre-trial detention facility takes place in a designated cage located immediately before the room for the guards on duty. It is partitioned in two by a lattice; on the one side there is a small space with one seat for the detainee, and on the other side - a desk and two chairs for visitors. The visiting room of the pre-trial detention facility in Haskovo has a bench on the visitors' side, but there is no place to sit on the detainees' side. Visits at the pre-trial detention facility in Gabrovo are conducted with detainees locked in three metal cages, which in the past were used for 24-hour detention under the Ministry of Interior Act, and visitors standing in a small corridor in front of the cages.

During the state of emergency, visits were suspended and reintroduced via video conferencing through Skype. This practice continues in most places even after the restoration of regular visits.

24.2. Attorney visits

Accused persons and defendants detained in pre-trial detention facilities have meetings with their attorneys every day within the administration's working hours, with unlimited duration. Nevertheless, there was at least one documented instance of limiting the hours and days for attorney visits. According to the June 2020 internal order of RSEP – Veliko Tarnovo, the attorney visits in the local pre-trial detention facility take place from Monday to Wednesday from 8:30 to 11:30 and from 13:30 to 16:30. In the facility in Varna, meetings with lawyers take place only during working hours, but, with the permission of the investigative body, there have been meetings outside of working hours as well. This could happen for example due to the detainee rejecting the public defender assigned when the charge was filed, and the need to meet with a new attorney before appearing in court for the hearing of the remand measure. Some places have introduced restrictions regarding the time for holding meetings with the defenders under Art. 91, § 2 of the CPC (family members of the accused person). In the Kyustendil pre-trial detention facility for example such visits are allowed only between 8:30 and 10:00 on weekdays.

There is no schedule or special booking required for attorney visits. The visits happen either in specially designated rooms or in the rooms for visits with relatives. In some places, a partition is installed between the attorney and the detainee - glass or plexiglas, and the conversation is conducted by telephone. Organizing the meeting in this way significantly complicates the communication between the attorney and their client and can undermine the effectiveness of the defense. The law does not require a partition in the rooms for

attorney meetings. During the meeting, the detainee and the attorney may only exchange documents that are relevant to the case. The attorney visits can be observed, but conversations cannot be listened to and recorded.

The attorney visiting room in the pre-trial detention facility in Shumen has a desk and two chairs, a window and a heater. The security staff observe the meeting through the glass window on the door. In the detention facility in Plovdiv, there are two separate rooms for attorney meetings in the corridor before the facility. Such visits are allowed during the administration's business hours and by exception on weekends. Plexiglas partitions are planned in both rooms to separate the attorneys from their clients. In the pre-trial detention facility on G. M. Dimitrov Blvd. in Sofia, detainees can meet with their attorneys during the working hours of the administration, but there are no separate rooms for this purpose and the rooms for family visits are used. Due to the lack of separate rooms, it is sometimes necessary to hold both an attorney meeting and a visit with relatives in the same room, if the attorney or their client has given their consent.

24.3. Store

Detainees can use up to one minimum monthly salary to buy goods and prepaid phone cards from the store. The money can be received in cash or via post office transfer but cannot be wired by bank, like in prisons. For example, in the Veliko Tarnovo pre-trial detention facility Tuesday is the shopping day and detainees request items in advance. In Svilengrad, detainees can request a guard to buy them permitted groceries and cigarettes from a store in town, with orders being collected on Thursdays and fulfilled on Fridays.

24.4. Information on the rights and obligations of the detainees

Order No. Л-1321/10.03.2020 of the GDEP provides for the internal regulations in pre-trial detention facilities that are generally applicable to the entire detention system. On that basis, separate institutions adopt their internal regulations that specify and develop further the procedures for exercising certain rights and obligations. When new detainees arrive, the officers on duty should make them aware of the internal regulations and detainees must sign a declaration to this effect. Detainees do not get a copy of the regulations; in some institutions but not in all, there were prominently placed excerpts of these regulations. They do get a pamphlet with the rights of detainees according to international and domestic law. The pamphlet is available in several languages and includes several main sections: „Right to Life" (Constitution, International-

al Covenant on Civil and Political Rights), "Prohibition of Torture" (European Convention on Human Rights, CPT), „Right to a Fair Trial" (Constitution, European Convention on Human Rights), „Liberty and security of person" (International Covenant on Civil and Political Rights), „Rights of the Accused Persons Detained on Remand" (Ordinance No. 2 of the Ministry of Justice dated 19.04.1999), „Obligations of States Parties to the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment and Punishment" (UN Torture Convention). The content of the pamphlet has not been updated for a long time, as it mentions a regulation of the Ministry of Justice that was repealed in 2009. Overall, the document is of no practical significance. There is no information provided on how to petition the court with a request for protection against inhumane and degrading treatment, or how to contact any other human rights and control institutions relating to places of detention. There weren't any lists with telephone numbers of attorneys on duty in any of the pre-trial detention facilities visited.

In 2017, the ECtHR issued its judgment in the case *Lebois v. Bulgaria*⁵⁴⁰, finding that the lack of access to information about the way of exercising the right to visits and the right to telephone calls while in custody led to a violation of the applicant's right to private life. The ECtHR found that the internal rules containing the practical details of how detainees could exercise their legal rights to visits and telephone calls were neither published nor made available to the detainees in a standardized form.

In the execution report on the judgment, the Bulgarian government points out that as of September 2020, the brochure „General Rights in International and Domestic Law of Detainees in the Pre-trial Detention Facilities in the Republic of Bulgaria" has been made available in eight languages in the detention facilities in the country; that detainees sign declarations in various languages that they are being informed of their rights as detainees; that a police interpreter is sometimes provided at border pre-trial detention facilities⁵⁴¹.

However, these measures are ineffective and do not prevent subsequent violations of the right to private life of detainees who do not speak Bulgarian. The observations of the researchers are that each pre-trial detention facility has adopted individual rules for access to the telephone, visits and correspondence, but these are only available in Bulgarian.

⁵⁴⁰ ECHR, *Lebois v. Bulgaria*, No. 67482/14, Judgment of 19 October 2017, available at: <https://hudoc.exec.coe.int/eng?i=004-48899>. (in English)

⁵⁴¹ 383rd meeting (29 September – 1 October 2020) (DH) – Action Report (20/07/2020) – Communication from Bulgaria concerning the case of *Lebois v. Bulgaria* (Application No. 67482/14), available at: [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)726E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)726E). (in English)

The document, which is available in eight languages as the government points out, does exist, however it contains excerpts of international human rights documents and a generally incomplete list of the rights of detainees under the Bulgarian legislation - right of access to an attorney, right to visitation, right to telephone calls, etc. It does not contain what the ECtHR stated as necessary - practical information on how and when detainees can exercise these rights. Such rules would contain visitation days and times, what items can be brought during visitation, when and where a prepaid phone card can be bought, what is the procedure to access the telephone, etc. The declaration that detainees sign that they have been informed of their rights does not contain such details either. The government claims that interpreting services are available in border region pre-trial detention facilities, but this is not stipulated as a right of detainees, rather it happens incidentally and does not cover all places of detention.

24.5. Telephone calls

Accused persons held in pre-trial detention facilities have the right to telephone calls, but the conditions and procedures are significantly more restrictive than those of the convicted prisoners. The GDEP has a contract with a telephone service provider and our research found that there were one or more telephones installed in all visited facilities. To use the telephone detainees buy prepaid phone cards with credits; in 2020 a card with 100 credits costs BGN 12.40. Convicted persons report that 100 credits are enough for around a 30-minute call to the mobile network in the country. Phone cards can be ordered from the security staff once or twice a week; they are not available in pre-trial detention facilities (except those in prisons), which means that it can take several days from being admitted to the detention facility to make the first phone call. According to the guard on duty in the pre-trial detention facility in Svilengrad, during the first 72 hours the detainees are not allowed to talk on the phone, and the right to a phone call with the relatives is provided during the initial detention by the police. A call can be made only after the court hearing to determine the remand measure. This view contradicts the law. The pre-trial detention facility in Varna declared that they do not limit the right to telephone calls during detention for up to 72 hours. They stated that in addition to telephones with prepaid cards, a service telephone was placed in the corridor in front of the detention facility and detainees can use it to call their relatives when they are admitted to the facility and inform them that they were detained and when they could visit. The pre-trial detention facility in Vidin also confirmed that detainees can make a phone call to their relatives.

In general, free telephone access is provided exceptionally in the event of serious family issues or urgent legal cases⁵⁴². The pre-trial detention facility in Plovdiv confirmed that they also have service phone cards which they give to socially disadvantaged persons if they need to contact their relatives.

Telephones are installed most often in the outdoor areas and in the corridors of the pre-trial detention facilities. According to the Internal Regulations, detainees can make phone calls between 8:30 and 18:00 every day⁵⁴³ but some facilities have introduced additional restrictions in this regard. In the detention facilities in Haskovo, Svilengrad, Shumen and on Major Vekilski Str. in Sofia, for example, detainees could talk on the phone during their outdoor time and otherwise only by exception. Detainees are allowed to call a list of persons and numbers pre-approved by the security staff to prevent contact with persons that the investigative authorities have banned from visits and calls. It is possible to restrict contacts in this manner for convicted prisoners as well but their calls are not controlled. It was reported that in the Kyustendil pre-trial detention facility detainees may call a maximum of 10 relatives or friends, and the 10 telephone numbers are entered in a special list with the persons' names. According to an employee from the pre-trial detention facility in Svilengrad, the list of persons that detainees are allowed to call must be approved directly by the investigative authorities, not by the security staff. The information about each call - number, name, surname and relationship with the detainee, as well as the time of the start and end of the call - is entered in the detainee telephone call log.

The by-law introduces some ambiguity regarding whether the content of the calls of the detainees is subject to control by the security staff. According to Art. 79, § 4 of the REEPPDA „[t]he nature and content of the telephone calls cannot threaten or disrupt the security and order in the penitentiary”, and Art. 79 § 5 of the REEPPDA states that “[t]he nature and content of the telephone calls of detainees are not subject to control by the administration of the prison, correctional facility or prison hostel”. The Internal Regulations of Pre-trial Detention Facilities specify only about conversations of detainees with their lawyers that they should take place in a way that does not allow them to be overheard by the security staff. The content of Art. 79, § 4 of REEPPDA is repeated as well. In any case, eavesdropping on the conversations of detainees without special authorization issued by a judicial authority is unconstitutional. It contradicts Art. 34, § 2 of the Constitution, which grants the exclusive power of the judiciary to authorize interference with the privacy of correspondence, and only when it is necessary to detect or prevent serious crimes.

⁵⁴² GDEP, Order No. Л-1321/10.03.2020 on the internal regulations in pre-trial detention facilities, Art. 59.4

⁵⁴³ Ibid., p. 59.

In practice, telephone calls in pre-trial detention facilities are conducted in the presence of a representative of the security staff. The telephone in the Shumen pre-trial detention facility is located in the guard's cubicle, located in the area for outdoor time. To make a call, the detainee points out a number from the pre-approved list, and the guard dials the number and passes the receiver through the grill of the cubicle. The calls take place in the immediate vicinity of the guard - no more than half a meter away, therefore the guard cannot help but overhear the call, including when the conversation is with a defender.

In the Haskovo pre-trial detention facility telephone calls take place during the one-hour stay in the walking room. A detention facility officer sits at the desk in front of the door of the room and oversees the room and the detainees talking on the telephone. This officer records each conversation in a special log. According to the detention commander, if the conversation is with an attorney, the guard steps aside, so as not to overhear the conversation.

In other pre-trial detention facilities, for example in Gabrovo and Blagoevgrad, telephones were located in the guard's room and, accordingly, security staff cannot help but overhear the detainees' calls.

There were general claims that there are no restrictions on the language in which the telephone calls could take place, but in at least one of the facilities a sign was posted stating that conversations can only be in Bulgarian. In the pre-trial detention facility in Gabrovo, they also explained that detainees of Turkish and Roma origin are directed to make telephone calls in Bulgarian.

24.6. Written correspondence and parcels

Detainees rarely keep written correspondence. Detainees' outgoing mail is only visually inspected for prohibited items in the envelopes and the envelopes are opened and closed in front of a security officer, then entered into an outgoing mail book and sent. Incoming mail is processed identically. It was emphasized everywhere that the correspondence itself is not read. In Plovdiv, the staff explained that there were no complaints about the inspection of correspondence. Detainees may order envelopes and stamps to be bought for them at their expense. Sometimes attorneys ask to leave stamped envelopes for their clients; another practice is for detainees' relatives to send a letter containing envelopes and stamps. Unlike those deprived of liberty in prisons, persons of low means cannot send petitions and complaints as socially vulnerable at the expense of the detention facility; the only exception in this regard is applications and appeals related to detention measures.

Receipt of parcels by mail is allowed only for detained foreign nationals. Bulgarian citizens can receive a food parcel and permissible personal items if they are brought during a visit.



25

VULNERABLE GROUPS

Under Art. 243, § 5 of the EPPDA, when admitting persons to be detained, an assessment is made of the risk of placement in a common cell and a diagnostic assessment based on basic information about the personal traits of detainees, about their addictions, illnesses, habits, and personal history. According to the guard on duty, this information is taken into account when assigning detainees to cells - the compatibility of characters is among the leading criteria, which are prepared by employees of the security staff.

The risk assessment of cell sharing includes four sections:

Section 1. It is filled in by the admitting officer and contains data on received documents of the detainee – identity document, cover letter, decree of detention by a prosecutor for up to 72 hours, court decision on the imposition of a remand measure detention in custody, previous convictions, document on health status.

Section 2. Contains information about the detainee: previous convictions and resisting arrest - previous conviction, current offence, record from the detention facility, if any - harassment, damage to property, aggression, hate, assault, drug and alcohol abuse, are they currently addicted, was there risky behavior during previous detentions. Additional questions to detainees related to concerns about being placed in a shared cell. This section concludes with an observer rating of the degree of risk – high, medium, and low.

Section 3. It is filled in by a health officer and is an assessment of the health status and the level of risk resulting from it - if it is possible for the detainee to harm other persons due to health factors: acute psychosis, disturbed behavior, aggression, refusal of examination. This section ends with an assessment and is signed by the medical specialist on duty.

Section 4. To be completed by the unit commander on duty or accommodation officer. This section contains information on the degree of risk, manifestations and decisions made.

The second diagnostic tool that is used in pre-trial detention facilities is a diagnostic risk assessment of the detainee. It contains information in the following sections:

- General information.
- Legal status, including previous charges and detentions, and previous convictions.
- Social status - marital status, age of relatives, possible desired/expected contacts with the detainee's family - including the question of whether the detainee has pets; and basic needs.
- Education/Occupation.
- Financial status.
- Drugs and alcohol: use, help received, and any connection between drugs/alcohol and the crime.
- Emotional state: including aggression and self-harm tendencies, suicidal attempts, cellmate concerns, and problems the detainee would like to share. Identifying the risk: possible risk factors - first time in detention, violent/sex offender, previous issues during detention, lack of family support, troubled relationship, lack of visitation, debt, addictions, emotional instability, general or specific issues, racist, homophobic, aggressive attitudes towards others, history of suicide attempts, reluctance to share problems with detention staff, poor personal hygiene.

The paper concludes with an assessment of the observations of the employee who completed the questionnaire. A risk reduction plan is prepared - special emphasis is placed on the source of the risk - addictions, fears, medications, social needs, and prejudices. The plan contains information about the deadline and the person who took the necessary actions and measures.

According to the GDEP, the issue with the diagnostic work in the pre-trial detention facilities is that it is carried out by employees of the security staff without special training and that some of the detention facilities do not have separate premises in which to interview the detainee. At the same time, "the involvement of security staff in diagnostic procedures in pre-trial detention facilities sharpens their attention, especially for recognizing the signs and symptoms of suicidal behavior in the day-to-day monitoring of detainees"⁵⁴⁴.

⁵⁴⁴ GDEP, Annual Report 2018, p. 67-68.

The pre-trial detention facilities also keep a register with data on detained persons who are addicts or prone to suicidal behavior. These detainees are subject to closer observation by the staff on duty.

Undoubtedly, one of the most vulnerable groups in detention is minors, and their prolonged detention can lead to severe negative consequences for their mental and intellectual well-being. The CPT draws special attention to their situation, pointing out that detention in conditions without physical and intellectual stimulation can be harmful for minors, and insists on the introduction that opportunities for various meaningful activities outside the cells. However, no measures have been taken in this direction so far⁵⁴⁵.

In 2021, there were 126 minors detained in pre-trial detention facilities⁵⁴⁶. In pre-trial proceedings, they are held in the same institutions as adults, but in separate cells. Due to the relatively small number of minors entering detention facilities, they are usually held in the conditions of solitary confinement. The statutory maximum duration of detention of minors is excessively long and does not meet international standards. The duration as well as the detention regime is absolutely incompatible with the age and the physiological, educational, family and resocialization needs of the minors. The criminal justice system in Bulgaria does not provide any opportunities for education or participation in reintegration programs while minors are held in pre-trial detention facilities.

Minors are allowed one additional hour of daily outdoor time but this does not alleviate their situation very much, since the places for outdoor time do not offer adequate opportunities for movement or other activities. Minors have their visits like everyone else - with a partition, without the possibility of physical contact with their relatives. If there aren't any specific identified risks to the safety of visitors or staff, this restriction is unreasonable and violates the right of minors to family life.

During the research visit, a 14-year-old juvenile boy was detained in the pre-trial detention facility in Haskovo. At that time, the duration of his detention was 7 months. The boy was placed alone in a cell with no television or radio. According to the detention commander, the investigating officer brings him newspapers and magazines and the detention officers talk to him. They also allow him an extra visit. Regardless, when taking into account the appalling conditions of this detention facility - the cells lack daylight, ventila-

⁵⁴⁵ Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015, CPT/INF (2015) 36, § 45, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806940c7>. (In English)

⁵⁴⁶ Information received by BHC according to an order under APIA from GDEP with ref. №П-186/18.01.2022.

tion, bathroom facilities and open space for walking - it can be concluded that the detention of this minor violated the prohibition of inhumane and degrading treatment.

Four minor boys were also placed in the pre-trial detention facility in Vratsa. At the time of the BHC visit, they were playing cards on the cell floor. They had no television or radio. The furnishings consisted of two metal cabinets, a table with four stools fixed to the floor, and two bunk beds. The minors' beds did not have sheets; they did not have sanitary materials such as soap, toothpaste or toothbrushes. The cell had a toilet and a sink with cold water. In this case, it is baffling that the boys are placed in the pre-trial detention facility of the Vratsa Prison, while the JCFB which offers significantly better conditions of detention, including school education, is located in the same institution.

Women also fall into the group of vulnerable detainees. In 2021, 388 women were placed in pre-trial detention facilities, or about 4% of all those detained during the year⁵⁴⁷. They are accommodated in separate cells from the men, under identical conditions, except the facility on G. M. Dimitrov Blvd, where the cells for women and juveniles have hot water and toilets with seats, not squat toilets. There are no sanitary pads available in the pre-trial detention facilities.

According to the staff of all pre-trial detention facilities, drug addicts are also vulnerable, especially in the initial period of their detention. Sometimes, in cases of addicted detainees, detention officers have talked to the supervising prosecutor to „hurry things along” so that the detainee would not stay in the facility too long. Officers also pointed out that, unlike ten years ago, when the use of heroin was widespread, now when other drugs are more common, the adaptation period after detention is shorter. Methadone therapy is not available in pre-trial detention facilities, but a case of a drug-addicted detainee was mentioned who was included in a methadone program in Plovdiv and his relatives procured the methadone from Plovdiv and delivered it to the detention facility. There are no psychologists employed in pre-trial detention facilities but in many places the need for such specialists was emphasized. Detainees in pre-trial detention facilities in prisons can use the services of the prison psychologist.

Foreign nationals in pre-trial detention facilities are also in vulnerable situations, mainly due to difficulties in accessing information in a language they understand, in contact with the outside world and in acquiring things that are not provided by the administration. No interpreting is provided for foreign national detainees outside of criminal proceedings, and information on their rights and obligations during detention is not available in foreign language

⁵⁴⁷ Information received by the BHC according to an order under the APIA from the GDEP with ref. No. Л-186/18.01.2022.

translation⁵⁴⁸. The money that detainees use to buy groceries, sanitary materials, prepaid phone cards and other necessities can only be provided on-site at the place of detention or by post office transfer, but not by bank transfer, which is a serious challenge for foreign nationals. According to the regulations, detainees who are not Bulgarian citizens are notified of their right to contact diplomatic or consular representatives of the country of nationality, and they are immediately provided with an opportunity to do this.

Not a single pre-trial detention facility is accessible to people with reduced mobility – there are no ramps, elevators or other mobility aids, including in the newly opened institutions like the one in Shumen. When asked what measures are taken for people with locomotor problems, the guards stated: „We help them.” There have been complaints in the pre-trial detention facility in Blagoevgrad regarding the toilets, which are only squat type and cannot be used by detainees with specific limb problems. For this reason, a chair was adapted for such a detainee according to the management of the facility.

Other detainees in situations of vulnerability often identified by prison officers were the poor and illiterate prisoners, people with mental illness and in other serious conditions.

⁵⁴⁸ On this issue, see chapter Contacts with the outside world, subtopic Information on the rights and obligations of detainees.

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USE OF THE PREVENTIVE AND COMPENSATORY REMEDIES

In the course of the field study, very sparse information was collected from conversations with representatives of the pre-trial detention facilities about the application of the new remedies against inhumane and degrading conditions in detention. The heads of most institutions did not have data on the number of filed cases and their outcome, specifying that the lawyers of the RSEP are involved in these proceedings and they are requested to provide only references and clarifications. Still, some places provided information about the cases. In the pre-trial detention facility on G. M. Dimitrov Blvd. in Sofia, for example, which is also the busiest detention facility in the country, the total number of resolved cases brought against the facility in 2019 and up to the day of the visit in 2020 was 14, of which:

- 3 under Art. 276 of the EPPDA (preventive remedy);
- 6 under Art. 284 of the EPPDA (compensatory remedy);
- 4 under Art. 1 of the Liability of the State and Municipalities for Damages Act;
- 1 challenging an order based on Art. 101, § 5 of the EPPDA - imposition of disciplinary sanction „withholding a food parcel for a period of up to three months“.

The courts found against the GDEP in three of the cases under Art. 284 of the EPPDA. The outcome of the cases under the preventive measure is not known.

The report for cases against the pre-trial detention facility in Shumen for 2019 lists 5 compensatory cases, all of which relate to conditions of detention

in the former building of the facility. No complaints were filed about the living conditions since the opening of the new detention facility.

According to the commander of the pre-trial detention facility in Haskovo, lawsuits were filed over the lack of toilets and running water in the cells - things that were a given and could not be changed. According to an interviewed representative of the institution, detainees file these lawsuits to „make a buck or two“. Officers from the arrest at the Vratsa Prison also summarize that detainees file lawsuits as “a way to support their wives”.

The representative of the pre-trial detention facility in Svilengrad who was interviewed reported that there is no information about the number of cases against the facility, but his impression is that the detainees do not file lawsuits during their stay there - „they keep quiet“; „they can sue from the prison when they get out.“ In the database of the regulatory information system Ciela, one can find acts on compensation cases related to the poor conditions in the detention facility in Svilengrad, the compensations for which, however, were determined in a very low amount.

Excerpt from Judgment No. 163 of 05.05.2020 on admin. case No. 1158/2019 Administrative Court - Haskovo

„The plaintiff was placed in a cell with a total area of 6 sq. m., together with 5 (five) other detainees. In this room, some of the detainees were smokers, and the plaintiff was a non-smoker. There wasn't any ventilation in the room and the claimant constantly experienced breathing problems. They did not have a table and chairs, so they ate on the floor. There was no toilet in the cell and for that purpose, they used bottles or buckets if necessary. He was taken out for a shower and a shave once a week. There was no direct daylight in the cell, and the fluorescent lighting worked 24 hours a day, which made it impossible to sleep. The pre-trial detention facility in Svilengrad did not provide the opportunity to go outdoors to the so-called „square“ for at least 1 hour a day. The condition of the beds and furnishings was deplorable and extremely unsanitary. Meanwhile, the plaintiff was deprived of the right to vote in the parliamentary elections held on 26.03.2017, as well as in the presidential elections in 2016.“

The plaintiff also complained about having to use a bottle to urinate in the cell, as they did not allow the use of a toilet at all times.

The court found a violation of Art. 3 of the EPPDA and for a stay of 6 months in inhumane and degrading conditions awarded the plaintiff compensation of only BGN 250.

A review of the 2019 case law of the Administrative Court - Kyustendil on cases for compensation for non-pecuniary damages caused by poor conditions of detention in Kyustendil indicates that cases are dismissed without being heard on the merits due to irregularities in the complaints - incorrect legal standing of the defendant, failure to pay a court fee, failure to serve a copy of the complaint on the defendant.

Most of the interviewed employees share the opinion that cases for the conditions in pre-trial detention facilities are filed after the release or transfer of the detainees to prison. A review of case law also confirms this. The reality in detention facilities is such that filing lawsuits by detainees without the involvement of a lawyer is virtually impossible. At no time are detainees given information about the possibility of seeking redress against inhuman and degrading conditions through the courts or of any other recourse to an authority exercising control over places of detention. There are no libraries and no provision is made for detainees to have access to legal literature both for preparing their criminal cases and for filing complaints against the living conditions; phone calls are listened to. Writing paper, writing materials, envelopes and stamps are not provided free of charge, and the state filing fee cannot be paid from the detention facility. Access to free legal aid to prepare a complaint and file an administrative case from the prison is also impossible, as it requires sending a special written request to the National Legal Aid Bureau, and the respective forms are not provided to the pre-trial detention facilities. These and other factors make the legal defense against violations of Art. 3 of EPPDA inapplicable to the conditions in pre-trial detention facilities, especially the preventive measure, which aims to stop inhuman or degrading treatment current at the time of the submission of the claim and consideration of the case.

Moreover, the preventive measures introduced in the EPPDA cannot be used to protect against inhumane conditions associated with overcrowding in detention facilities. The EPPDA provides for the possibility of protection against inhuman and degrading treatment arising solely from the actions and inactions of the penitentiary authorities, but in cases of overcrowding these authorities cannot exercise control over the number of detainees in detention facilities; they even cannot transfer detainees from one institution to another. Only the relevant prosecutor or court has such powers, but the remedy does not apply to their actions and inactions.



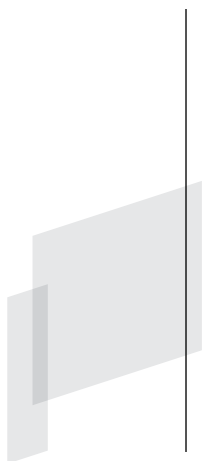
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STAFF

The staff in the pre-trial detention facilities includes the security staff and the medical officers. The number of employees in individual pre-trial detention facilities varies, depending on capacity and workload. For example, the number of security staff in the pre-trial detention facility on Major Vekilski Str. at the time of the BHC visit in 2020 was 86 people and 16 people in the facility in Svilengrad. In the course of the visits, no significant problems with understaffing were found. According to the observations made, at least one female guard is appointed in each institution, and the smaller facilities female guards also hold the position of clerk. Women in the security staff conduct searches of the female detainees, escort them to the bathroom, etc.

Specialists such as psychologists, pedagogues, and social workers are not employed in the detention facilities. In most places, it was specified that a psychologist is available in the relevant RSEP and can be engaged, if necessary, but such specific cases were not identified.

In the places with the worst conditions of detention, the working conditions for the officers were also extremely poor. In the pre-trial detention facility in Svilengrad, there are two small rooms for the staff, with old and worn furniture and without a special place for rest, and the staff use a common bathroom with the detainees. In the pre-trial detention facility in Kyustendil, the only room for the staff on duty is small, overcrowded and stuffed with various equipment - desks, cabinets, chairs, computers, video surveillance, folders with records, etc. The staff in the pre-trial detention facility in Dobrich, functioning as of 2020, does not have a separate room - the staff on duty change clothing on the stairs of the facility and their workplace is the corridor of the facility - at one end is a separate corner for the security staff with three chairs. In 2021, this facility was moved to a new building and conditions there have not been monitored by researchers.



CONCLUSION AND RECOMMENDATIONS

The present study included monitoring of the condition of prisons and pre-trial detention facilities and the treatment of prisoners in Bulgaria after the ECtHR's pilot judgment in the case of *Neshkov and Others*, which launched the penitentiary reform to address overcrowding, improve material conditions and introduce effective safeguards against inhuman and degrading conditions of detention.

Undoubtedly it should be noted that in recent years, in many ways, we have been observing **improving conditions** of detention, by the requirements of international standards for the treatment of detained persons.

One of the most important positive trends is **the reduction of prison population**. The beginning of this trend predates prison reform, with data showing that the average number of inmates in prisons and prison hostels in 2021 was 6192, or 18% fewer than in 2015. Part of the reasons are related to the lower number of persons entering the prisons. Another cause of the positive effect is the larger number of prisoners initially serving their sentences not in prisons but in open-type hostels where labor engagement is higher, allowing decreased duration of sentences and therefore shorter stay in penitentiary institutions.

Overcrowding in the closed-type facilities is also reduced. In the summer of 2015, overcrowding was reported in half of the country's prisons and in one closed-type hostel, as of 8 June 2021, only the Plovdiv Prison and the CTPH Debel were overcrowded.

This period was marked by considerable efforts to improve the material conditions in prisons, as well as to make them compliant with the minimum requirements for humane treatment of prisoners in line with the prohibition of

inhuman and degrading treatment. Since 2015, three OTPHs with poor material conditions have been closed down: Keramichna Fabrika, Sredna Gora and Galabovo. New prison facilities and parts of prison facilities have been opened as well, such as the open-type and closed-type prison hostels Debelt, the Prison Hostel Razdelna, the OTPH Belene, and the OTPH Vereya. A new building has been opened at the OTPH Pleven. The former Juvenile Correction Facility for Boys in Boychinovtsi has been converted into a closed-type and open-type hostel and a new Correction Facility for Boys has been opened at the Vratsa Prison. A key moment in the transformation of the living environment according to the standards for the treatment of prisoners is the major renovations in the prisons in Stara Zagora, Pleven, Bobov Dol, Lovech, Pazardzhik, Burgas, Sliven, in the CTPH Cherna Gora and others, which decreased the capacity of the cells and furnished them with **running cold water and toilets, completely separated by walls from the rest of the sleeping quarters**. A previous BHC study documenting the situation in prisons in 2008 reported that in eight of the prisons in Bulgaria, cells lacked toilets, forcing inmates to use buckets at night to relieve themselves. By 2021, this serious problem is almost completely overcome in prisons.

Another positive change is the overall **discontinuation of the use of triple bunks**, which was the practice in the past in the most overcrowded prisons. Double bunks are also used more rarely in the prisons. During renovations, in many places the flooring and windows in the cells were replaced as well. Part of the furniture was repaired or replaced. In the prison groups, **kitchen facilities were provided where prisoners could prepare their own food**.

Detention conditions for life prisoners are also improving. After the changes in the penitentiary legislation in 2017, the number of life prisoners isolated in high security areas decreased significantly. Thus, if in 2017 only 14% of those sentenced to the most severe punishments had a substituted regime and were taken out of the high-security areas to common cells in the prison buildings, in 2020 their percentage is already 53%. In recent years, measures were taken to improve the material conditions in the high-security areas, most often in the form of providing toilets in the cells, replacing window frames and flooring, and repainting the walls.

The legislative amendments of 2017 narrowed the range of disciplinary violations for which the most severe disciplinary punishment can be imposed - isolation in solitary confinement for a period of up to 14 days. The change is in response to recommendations of the CPT to reduce the use of solitary confinement in prisons in Bulgaria. Analysis of the data on disciplinary practices for the period 2016–2021 shows that the reform achieved its goal and **the in-**

stances of imposing the most severe disciplinary punishment decreased three times – from 1915 in 2016 to 656 in 2021.

Some positive trends were documented for pre-trial detention facilities as well. There has been an ongoing trend in recent years of **closing down pre-trial detention facilities**, which for structural and other reasons are not subject to renovation and alignment with the minimum European requirements for lighting, ventilation, suitable temperature, access to water and bathroom, a place to spend outdoor time, etc. After 2017, the pre-trial detention facilities in Dupnitsa, Razlog, Montana, Targovishte and Yambol were closed. In 2021, the pre-trial detention facility in Gabrovo was closed. It was the one with the most inhumane conditions - small cells, no toilet or running water in the cells, and no access to daylight. Along with closing down pre-trial detention facilities, in larger cities, they are being **relocated** from buildings that are in poor condition and not subject to renovation or restructuring, to the prison facilities in the respective settlement. At the end of 2021, there were seven pre-trial detention facilities opened in prisons. Since 2017, several pre-trial detention facilities have been moved to **new separate buildings**, including the ones in Shumen, Dobrich and Blagoevgrad.

Between 2016 and 2021 **the number of persons detained in the pre-trial detention facilities decreased by 30%**. This is mostly due to the smaller number of persons temporarily transported to the pre-trial detention facilities from other places for deprivation of liberty. There is also a decrease in detainees on remand in pre-trial proceedings.

Despite these positive trends, which are mostly infrastructural, some of the changes proved to be ineffective and did not produce the desired results in practice or caused unwanted consequences. The legislative measures were met with strong opposition from those working in the system, often due to the lack of sufficient staff for their implementation, which had a negative impact on the movement of prisoners through the progressive system. Numerous other problems of the penitentiary system in Bulgaria remained completely undressed and continued to deteriorate.

The reduced number of people entering penitentiary institutions in recent years is not a result of targeted legislative or policy changes. The part of the 2017 legislative reform aimed at addressing overcrowding in places of detention covers only the regulatory framework for the execution of punishments and does not address issues related to the types of punishments or how punishments are determined. In this sense **the reform did not bring about the introduction of any alternative non-custodial sentences, the decriminalization of certain acts or other measures „at the entrance” of the penal system to**

limit the use of imprisonment from the start – measures emphasized by international documents and the ECtHR in addressing overcrowding in prisons⁵⁴⁹. The only exception to this is the possibility introduced in 2016 to electronically monitor persons under house arrest and persons subject to certain probation measures. This measure however is used very rarely.

The smaller number of people serving sentences in prison wings and CTPHs is at the expense of the growing **overcrowding in open-type hostels**. Material conditions in open-type hostels are not any better than in closed-type institutions, but the regime in them allows prisoners to spend most of the day outside the cells, and not in all cases overcrowding leads to a violation of the prohibition of inhumane and degrading treatment. However, overpopulation harms to a great extent the prisoners who are initially allocated to the closed-type institutions and who subsequently acquire the right to recategorization, but due to lack of capacity in the open-type institutions remain serving their sentence under less favorable conditions in terms of opportunities for resocialization. Another negative trend is **the separation in one building of a prison facility of closed and open type**, in which the stricter regime requirements of the closed type take precedence and the differentiated treatment of the two categories of prisoners – open and closed type – is practically removed.

The construction of some of the new facilities in small settlements is cause for some concern. The choice of these locations was dictated by institutional considerations, without taking into account the negative effects it would have on the basic rights and opportunities for rehabilitation of detainees, including difficulties in staffing, ensuring access to medical services, and having family and legal visitation. A striking example is the case of the Prison Hostel Debelt at the Burgas Prison. Although it is located in a new building, this institution has an extremely bad microclimate due to the lack of activities, work, quality medical care and the impossibility of regular visits. The disciplinary sanctions are three times more than the awards, and reports of self-harm, violence between prisoners and abuse by guards are above the system average.

The general observation of our monitoring visits is that the **work on these constructions and renovations is of a poor quality and low-quality materials have been used**. Most of the sinks, faucets, toilets and floor tiles used for the sanitary units are for residential rather than commercial use, which leads to their rapid deterioration and subsequent need for replacement. Most newly built bathrooms are designed without ventilation systems or windows for ventilation, which causes moisture and mold growth. The lack of ventilation also

⁵⁴⁹ Appendix to Recommendation Rec (99) 22 of the Committee of Ministers of the Council of Europe concerning prison overcrowding and prison population inflation, §§ 1–5. (in English)

creates discomfort for the occupants from the smell that permeates the cells. **None of the prisons visited, including the newly opened and completely renovated ones, are accessible to people with physical disabilities.**

Due to fuel savings, there were complaints of inadequate heating in the institutions and **low temperatures in the cells** during the cold months. In at least three prison institutions, the heating in the cells is still **with wood and coal stoves**, which creates air quality problems, especially given the high population and poor indoor ventilation. **The supplies provided with budget funds for maintaining personal hygiene and for cleaning the premises are insufficient.** Toothbrushes and toothpaste, shampoo, razors and toilet paper are not budgeted for and are not provided to inmates by right, but are provided only in exceptional cases. **The infestation of bedbugs and cockroaches** in prisons and pre-trial detention facilities is one of the longest-standing, widely spread and difficult-to-solve problems of living conditions in the Bulgarian penitentiary system. Apart from pest control by spraying, which is largely ineffective, no other strategies are applied to deal with the problem. Regarding the food, many institutions have registered complaints related to **the low quality of the food products used and the lack of fresh fruit and vegetables, dairy products and eggs on the menu.** The main reason for this is the broadly formulated option for the food supplier to substitute canned for fresh produce. There are no minimum requirements for the daily ration in terms of nutrients - protein, fat, vitamins and minerals. Most of the food products and all sanitary supplies that are authorized for use in prisons can only be purchased from prison stores. This is a major problem for all prisoners because **the goods offered in the stores are of low quality and are more expensive than those in the retail network within the country.** A significant contribution to the higher prices is the markup of 7% on all goods for the benefit of the PSF.

Given that inmates working for pay are between 20 and 25%, a large proportion of the financial support of the majority of the prisoners, beyond what is given by the penitentiary institutions, is provided by their relatives. The situation is further complicated by the increasing practice of bailiffs garnishing prisoners' personal accounts to which their relatives transfer money. Even small amounts intended for the purchase of basic sanitary supplies and other essential goods which the prison does not provide, such as shampoo, razors, toilet paper, and prepaid phone cards, are still garnished. This puts the prisoners in a situation where they can neither receive these items during visits, nor have the means to buy them from the store.

Medical care in most places of detention is in critically poor conditions. The issues encompass every aspect of due care - superficial initial examinations, lack of prevention and access to dental services, long delays in referral

to external specialists and external hospital facilities, low quality of services, critical state of prison hospital care. In most of the prison hostels in the country, there are no permanent medical centers, nor even personnel trained to provide first aid. Specialized medical care is provided by external specialists, but access is not well coordinated and takes place with significant delays. It is especially difficult or even impossible for patients of low financial means to access medical services that are not covered or only partially covered by the NHIF. Many complaints were received about prescribed medication therapy not being administered due to a lack of financial means among prisoners. Traditionally, the proportion of people with HIV, hepatitis C and tuberculosis among prisoners is much higher than among people outside detention facilities, which requires constant and targeted work on diagnosis, treatment and prevention of the spread of these diseases in places of detention. In recent years, these measures have been hindered by various factors, including a shortage of medical personnel in prisons, limited funding and the isolation of the penitentiary health system from the NHIF.

The mortality statistics in places for deprivation of liberty are alarming.

Despite the declining number of people placed in penitentiary institutions, deaths have been rising in recent years, with 2021 marking the highest number of deaths in prisons and pre-trial detention facilities since 2003 – 55 inmates. In 2021, the mortality rate in places of detention is the highest among the Council of Europe member states, and compared to the overall mortality rate in Bulgaria, it is four times higher.

The newly introduced mechanism for medical examination and registration of incoming complaints of violence from prisoners suffers from significant shortcomings, which compromise its preventive functions. One of the obvious problems is the limited presence of medical professionals in the places of detention. Secondly, we have received several reports from prisoners that even if there is a health professional in the institution when the injuries are caused by a guard, the injured are deliberately not taken for examination immediately. A significant deficiency of the mechanism for the examination and registration of injuries is that the examinations are carried out by health professionals employed or hired by the places of detention; they are subordinate to the prison governor and have collegial relationships with the security staff. Also, medical professionals do not strictly fulfil their obligation to notify the prosecutor's office of every case of registered traumatic injury.

Analysis of the data collected from prosecutor files and pre-trial proceedings initiated for violence by guards in places of detention reveals ongoing impunity in the cases of abuse of inmates. Thus, for the last six years, 363 prosecutor files were opened for complaints of violence, and most of them were

subsequently closed; there were 38 pre-trial proceedings, and only two prosecutor acts have been submitted to the court, one of which is a request for exemption from criminal liability and imposing an administrative penalty.

A review of disciplinary practices also reveals some negative trends. For the period 2017-2020, there was **an abrupt decrease in the number of rewarded prisoners** – by about 40%. In the same period, **the total number of disciplinary sanctions increased** compared to the average number of prisoners. The proportion of disciplinary sanctions revoked on appeal is negligible. Regardless of the type, any imposed disciplinary sanction is an obstacle to an inmate being offered a less strict regime, transfer to an open-type hostel, or early parole.

Prisoners serving a life sentence with a special regime in the high-security areas remain in excessive isolation, with limited physical and intellectual stimuli, without meaningful social contacts and with minimal opportunities to engage in constructive activities. Many of the long-time life sentence prisoners have visible signs of mental problems, manifested in asocial behavior, depression, anger, episodes of aggression and self-aggression. Overall, their prospects for progressive easing of the regime, commutation of the sentence to imprisonment or pardon, and eventual release from prison are very slim.

In all its functional aspects - staff, material, programs, medical care - the penitentiary system is not prepared to meet the needs of prisoners with physical, sensory and mental disabilities, mental health problems and addictions, and their number is increasing. These categories of prisoners are often accommodated in separate groups, but this does not provide them with the necessary conditions or special care, medical and other therapy. The penitentiary system does not have psychiatrists, and the number of psychologists is extremely insufficient, with some institutions completely lacking a psychologist. There is a large number of prisoners who self-harm and attempt suicide. A large proportion of inmates who self-harm are people with drug addictions or mental illnesses who need proper mental and psychiatric care. However, their actions are often interpreted by the penitentiary authorities as demonstrative, manipulative, and inappropriate behavior, as a violation of internal regulations, and this approach carries the risk of exacerbating the situation. The number of drug-using prisoners is also very high, but there is a dwindling trend in drug addiction treatment and rehabilitation and harm reduction activities and programs, and in some places of detention they are completely absent.

Inter-prisoner violence is also a serious problem. Of the institutions visited in the course of the research, the most cases of violence, harassment and abuse among prisoners were found in some closed-type prisons, with overcrowded or densely populated cells, where prisoners remain for most of the

day, due to limited opportunities for work or other resocialization activities. Prisoners with mental health problems, drug users, LGBTIQ people, Roma and poor prisoners, and prisoners convicted of sexual offences against children are highly vulnerable to violence and other forms of abuse. Some of the most severe cases of abuse reported to researchers involved prisoners with multiple vulnerability characteristics. These people suffer systemic violence which often includes degradation, being forced to do various activities such as cleaning and laundry, and sexual abuse.

The possibilities for seeking remedies, which were expanded by the legislative amendments to the EPPDA in 2017, as well as for reporting to other external institutions and organizations, remain difficult to access due to a lack of information and legal assistance. However, the most serious **problem for all applicants is the hostility of the penitentiary system towards them**, which manifests itself in intimidation, institutional repression, and formal and informal punishments.

Due to the insufficient frequency and duration of visits and the automatic application of security measures excluding physical contact, **visitation arrangements in closed-type penitentiary facilities are contrary to international standards** regarding the rights of prisoners to family life.

The organization of labor of prisoners is highly problematic. Working prisoners do not have the rights of workers within the meaning of the *Labor Code*; they do not enter into employment contracts and do not have job descriptions. They are not subject to social insurance for pension, maternity and general illness, unemployment or occupational accident, but their remuneration is subject to personal income tax. In most places, there is a 6-day working week with no overtime pay. Between 50% and 60% of the prisoners' remuneration goes to the PSF. Those employed in workshops and factories get paid based on a standard amount of work per day and if the standard is fulfilled below 100%, the corresponding part of the working day is counted towards the pay. Most of the prisoners think that these standards are greatly inflated and thus difficult or impossible to fulfil. The low pay and the small number of credited days per month, often accompanied by poor working conditions, have a demotivating effect and some prisoners prefer not to work. It is a widespread practice to appoint prisoners to perform voluntary unpaid work for the benefit of the PSF, which is not allowed by the law. The working conditions of the majority of workplaces in the prisons documented in the course of the study were very poor and did not comply with basic requirements for occupational health and safety. The number of occupational accidents resulting in disability registered among prisoners is high.

School education is organized in prisons, but some categories of prisoners do not have access to it, including foreign nationals, those sentenced to life imprisonment placed in high-security areas, and those detained in permanently locked cells in prisons. The curriculum, textbooks and study aids are not adapted for adult learners. The quality of the educational process also raises some concerns. Participation of prisoners in vocational training courses is encouraged but the percentage of prisoners receiving vocational training is negligible.

Another important element of resocialization activity for prisoners is specialized group correctional and therapeutic classes. The data show that **very few prisoners benefit from specialized group work**. Problems with staffing the Social and Educational Activities sector and the high workload of its employees are among the leading reasons for the insufficient group and individual correctional work with prisoners in some prisons.

The law requires that inmates be provided with access to a wide range of activities to spend their time meaningfully - creative and cultural activities, sports, and religious support, but these activities are organized sporadically, with different intensity in different places of detention, depending on the availability of financial and human resources. The lack of funds in the budget of the penitentiary institutions for providing tools and materials for the events, the lack of equipment and the outdated facilities are among the main challenges to organizing ways to spend time meaningfully.

Digital literacy training and providing prisoners with controlled access to the internet to participate in training courses, correspondence with institutions, search for legal and other information, and communication with relatives, are good practices in several countries in Europe, but not in Bulgaria. In our country, in many places in prisons and hostels, **there are no computers at all and if there are any, they are obsolete**. The COVID-19 pandemic has „enforced” skype video conferencing instead of visits from relatives and attending court hearings, but it is the only online platform inmates use, and the use is limited and without clear rules.

In many of the visited pre-trial detention facilities the conditions of detention remain inhumane and degrading. Official data indicate that some of the facilities remain overcrowded year-round. In most of the visited facilities cells are undersized and the number of beds exceeds the permissible occupancy as calculated based on 4 sq. m. per one detainee - a sign of regular overcrowding. Moreover, the capacity of some facilities is artificially inflated by using a misleading calculation method - instead of the sum of the maximum capacity of each cell based on 4 sq. m. per person, the capacity is calculated by dividing

the total area of all cells by 4 sq. m. Thus the capacity exceeding 4 sq. m. per person in cells is added up and divided into additional accommodation for detainees which is not available in the cells. Apart from the beds, there is rarely room for other furniture in the cells, and if there is any, it is old and worn.

There are three pre-trial detention facilities in Bulgaria where the cells **do not have windows or access to natural light**. There are many other places besides these where daylight is so scarce that it certainly does not meet adequately the requirement for access to natural light. Artificial lighting in cells is also generally dim and unsuitable for normal activities such as reading.

There is a problem with heating in all pre-trial detention facilities located in buildings of other departments, since the heating there is turned off after the administration's working hours and on weekends. **The lack of fresh air** in pre-trial detention facilities remains a serious problem and no sufficient steps have been taken to resolve it. Most of the places visited did not have effective air circulation and freshening systems. Building ventilation systems are old and inoperative or inefficient. As a result, the air in the cells everywhere was stale, stuffy and foul, including in the empty cells. Natural ventilation is often impossible due to the lack of opening windows.

Despite the improvements, 7 out of 26 pre-trial detention facilities in Bulgaria still don't provide detainees with access to running water and toilets in the cells. Although to a lesser extent, detainees still use bottles and buckets for that. One-third of the pre-trial detention facilities lack spaces to spend time outdoors, which is a very serious problem.

While the living conditions in the pre-trial detention facilities are gradually improving, **no positive changes have been observed in terms of the detention regime**. Detainees are kept in permanently locked cells where they spend 23 hours a day. In the newly established detention facilities, where facilities for group activities could be made available, no steps are taken to do so. The problem is also present in the pre-trial detention facilities moved to prisons, where there is a basic opportunity to provide activities, but the regime of the detention cells, which are locked for 23 hours a day, remains unchanged.

The statutory maximum duration of detention of minors is excessively long and does not meet international standards. The duration as well as **the detention regime is completely incompatible with the age and the physiological, educational, family and resocialization needs of minors**. The criminal justice system in Bulgaria does not provide any opportunities for education or participation in reintegration programs while minors are held in pre-trial detention facilities.

The problems of medical care and contact with the outside world for detainees are similar to those faced by those in prisons and prison hostels.

Despite the poor conditions in pre-trial detention facilities, the observations are that **detainees do not use the new legal mechanisms for judicial remedy against inhuman and degrading conditions**. The reality in detention facilities is such that filing lawsuits by detainees without the involvement of a lawyer is virtually impossible. At no time are detainees given information about the possibility of seeking redress against inhuman and degrading conditions through the courts or of any other recourse to an authority exercising control over places of detention. There are no libraries and no provision is made for detainees to have access to legal literature both for preparing their criminal cases and for filing complaints against the living conditions. Writing paper, writing materials, envelopes and stamps are not provided free of charge, and the state filing fee cannot be paid from the detention facility. Access to free legal aid to prepare a complaint and file an administrative case from the prison also could not happen, as it requires sending a special written request to the National Legal Aid Bureau, and the respective forms are not provided to the pre-trial detention facilities. These and other factors make the legal defense against violations of Art. 3 of EPPDA inapplicable to the conditions in pre-trial detention facilities, in particular regarding the preventive remedy, which aims to stop inhuman or degrading treatment at the time of the submission of the claim and consideration of the case.

Moreover, the preventive measure introduced with the amendments of the EPPDA has a limited use to protect against inhuman conditions associated with overcrowding in pre-trial detention facilities. The EPPDA provides for the possibility of protection against inhuman and degrading treatment arising solely from the actions and inactions of the penitentiary authorities, but in cases of overcrowding penitentiary authorities cannot exercise control over the number of detainees in detention facilities, they cannot transfer detainees from one institution to another. Only the relevant prosecutor or court has such powers, but the remedy does not apply to their actions and inactions.

The observations within the framework of the present project point to a large number of diverse recommendations in order to continue the reform of the places for deprivation of liberty in Bulgaria. Here we focus on those that affect human rights exclusively or significantly.

We recommend to the Bulgarian authorities:

Regarding material conditions of detention

- To continue efforts to renew and modernize the material base in prisons and in pretrial detention facilities.
- To close all detention facilities, which do not provide conditions of detention corresponding to the European standards.
- To ensure that the closure of prisons and pre-trial detention facilities does not come at the expense of infringing the right to family life of the prisoners, and in particular their right to receive visits from relatives and friends.
- To guarantee a minimum of 6 square meters and a minimum distance between walls of 2 m. in all single-occupancy cells, in accordance with the standard of the European Committee for the Prevention of Torture.
- To discontinue the practice of housing both open and closed prison facilities in one institution.
- To strengthen control over the quality of renovations and newly built prison institutions.
- To ensure that the toilets in the cells are completely separated from the rest of the premises with solid walls up to the ceiling.
- To provide adequate heating in all places of detention and eliminate the use of wood and coal stoves in cells.
- To ensure respect for human dignity and equal treatment of prisoners with disabilities, including by providing an accessible environment, aids and other facilities depending on individual needs.
- To ensure that all prisoners are regularly provided with basic hygiene supplies – toilet paper, toothpaste and toothbrush, razors, etc., as well as underwear, bath towels, socks, clothes and shoes for those who do not have their own.

Regarding access to food

- To improve the quality and increase the quantity of prison food, including by introducing minimum requirements for the composition of the daily food ration – proteins, carbohydrates and fats, and by limiting the possibility to replace fresh food products with canned ones.
- To drop the 7% markup in favor of the PSF on the prices of items sold in prison shops, including phone cards, food and hygiene products.
- To ensure that periodic control of pricing in prison shops is carried out to prevent prisoners from purchasing products at prices that are significantly inflated compared to the prices at liberty.

Regarding prison health care

- To initiate a reform process to integrate the prison health care system into the general health care system. Such a process should be driven primarily by public health priorities and should involve broad consultation with health authorities, health professionals, patient representatives and civil society. It should include a phase of analysis of the health needs of prisoners in Bulgaria, the shortcomings of the current system and a preparatory phase in which to report on all the organizational, budgetary and regulatory aspects involved in such a reform.
- To provide sufficient numbers of medical professionals in all places of detention, including prison hostels and pre-trial detention facilities.
- To provide a special budget line to cover the health costs of prisoners, which cannot be covered by the NHIF.
- To ensure that persons detained under a measure of detention and foreign nationals deprived of their liberty have the status of health insured persons and can actually benefit from their rights from the moment of detention, in accordance with the law.
- To ensure timely access to quality dental services for prisoners, including financial assistance to cover co-payments to the NHIF for those in need of dental prostheses who do not have funds.
- To ensure voluntary and confidential counseling and testing for HIV, hepatitis C, and tuberculosis screening for everyone entering prisons.
- To ensure that harm reduction measures, including access to a psychiatrist and psychosocial support, should be a priority in working with inmates who use drugs; to provide opioid substitution treatment with methadone where needed; to ensure prevention, prophylaxis and treatment of HIV and hepatitis.

- To provide for the mental health of prisoners, including by ensuring an adequate number of psychologists in prisons and partnering with external programs providing psychological support.

Regarding disciplinary measures

- To provide for the possibility for adequate protection in the procedures for imposing disciplinary sanctions, including the use of legal aid, as well as the possibility to appeal all punishments before an independent authority.
- To remove the restrictions introduced by the prison administration that a prisoner cannot receive more than one reward every three months, as well as that a punished prisoner cannot be rewarded until the punishment is removed.

Regarding protection from ill treatment

- To ensure the personal safety of prisoners by implementing targeted measures to prevent and protect against physical, sexual and psychological violence between prisoners, especially with regard to vulnerable groups: prisoners with mental health problems, drug users, LGBTIQ people, Roma and poor prisoners.
- To put in place effective mechanisms for the certification of the injuries of prisoners by an independent medical specialist, as well as effective mechanisms for the investigation of their complaints.
- To ensure the accurate maintenance of all types of documentation in the prisons and in the pre-trial detention facilities, for recording of injuries resulting from the use of force.
- To ensure that prisoners lodging complaints or with traces of ill-treatment should be provided with immediate access to an independent medical specialist for an examination, which should be carried out in private, without the presence of a guard or other representative of the prison administration, and for each registered case, without exception, the prosecutor's office should be notified.

Regarding activities and support in places for deprivation of liberty

- To provide a variety of activities in all places of detention, including pre-trial detention facilities. The activities should be tailored to the individual needs of the inmates.

- To ensure that all prisoners have access to the support they need, including specialized programs and services to address behavioral, emotional and other deficits, according to specifically identified needs.
- To ensure that the provision of remunerated labor by prisoners pursuant to Art. 78 of the EPPDA is considered as work for the purposes of pension insurance after deductions made from the salary.
- By order of the Minister of Justice to determine a smaller percentage of the remuneration of the laborers deprived of their liberty, which is taken away in favor of the PSF.
- To prevent the exploitation of prison labor, ensuring that all prisoners receive remuneration for their work for the benefit of the PSF and private employers.
- To ensure the strictest compliance with the legal provisions for safe working conditions in prisons and to ensure regular independent control of the working conditions of prisoners.
- To ensure access to education for all prisoners, including those detained in pre-trial detention centers attached to prisons, foreign nationals, those sentenced to life imprisonment and life imprisonment without parole. The educational program should be adapted for adults.
- To increase the opportunities for professional training for prisoners.
- To expand opportunities for social work and preparation for release in prisons, including by involving external institutions and organizations.
- To amend the Law on Higher Education in the direction of ensuring access to higher education for prisoners. Penitentiary institutions should encourage the inclusion of prisoners in higher education and should provide the necessary conditions for preparing and taking exams.
- To provide computers and digital literacy training for prisoners.

Regarding access to information

- To provide in the pre-trial detention facilities and in the prisons a written translation in different languages of the internal rules and other documents regulating the rights and obligations of the prisoners, including the court referral procedures, the NPM and protection mechanisms.
- To provide for the possibility of prisoners who do not understand the Bulgarian language to use an interpretation by an independent translator in their communication with the penitentiary authorities and in their participation in disciplinary and other procedures.

- To introduce controlled access to the internet for the purposes of participation of prisoners in training courses, correspondence with institutions, search for legal and other information relevant to them, communication with relatives, job applications and other appropriate purposes.
- To renew the funds of prison libraries with new editions and to provide wider access to them for those deprived of their liberty.

Regarding contacts with family and relatives

- To ensure that visits to prisoners housed in closed-type institutions and in pre-trial detention facilities, including visits to life prisoners, are held in premises without partition walls, with the possibility of direct contact and without the presence of a guard, unless there is a specific, real and a continuing threat to security, safety, or health that would necessitate the use of a barrier or supervision.
- To ensure that contacts in the premises for extended visits for a period of up to 4 hours in the closed-type institutions take place with video surveillance and under the control of supervisory and security personnel only in the case of the existence of a specific, real and continuing danger to the security of the prison or at risk of handing over prohibited items.
- To ensure, including through relevant legislative changes, that telephone conversations in custody are conducted without their content being disclosed to supervisory staff, unless specifically authorized by a judicial authority authorizing interference with the privacy of correspondence where necessary for detection or prevention of serious crimes, in accordance with Art. 34, § 2 of the Constitution of Bulgaria.

For further reform of the criminal justice system

- To ensure that the penalty of "life imprisonment without parole" be removed from the *Criminal Code*.
- To discontinue the automatic placement to a special regime of those sentenced to life imprisonment and life imprisonment without parole.
- To cancel the automatic application of the detention regime under Art. 248, § 1, item 1 of the EPPDA, in which certain categories of accused are kept in permanently locked cells without the right to participate in collective activities.

- To introduce an inalienable minimum when imposing garnishments on the personal accounts of the prisoners.
- To introduce a legal possibility for independent monitoring of places for deprivation of liberty by human rights NGOs.
- To amend the *Constitution of Bulgaria and the Election Code*, so that those deprived of their liberty can exercise electoral rights. Deprivation of such rights shall be done only on the basis of a court decision, when it is provided as a punishment in the *Criminal Code*.
- To strengthen the application of the institution of parole by considering the introduction of its automatic application after serving a certain period of the sentence in relation to certain categories of prisoners who do not represent a danger to society.
- To introduce the possibility of short-term prison sentences not being effectively served, but only being registered in the convicts' files.
- To introduce further alternatives to effective imprisonment, as well as the possibility of serving short effective sentences at weekends, so that convicts are not separated from their work and families.
- To make legislative changes so that the use of the compensatory remedy provides adequate redress against inhuman and degrading treatment.
- To expand the opportunities for free legal aid to those deprived of liberty.
- To ensure that regarding accused persons under the age of 18, pre-trial detention is abolished due to the complete impossibility of pre-trial facilities to ensure the implementation of the minimum standards for the detention of minors.

THE REFORM OF THE BULGARIAN PENITENTIARY SYSTEM: CURRENT STATE AND FUTURE PROSPECTS.



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