

HUMAN RIGHTS IN BULGARIA IN 2005

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Contents

1.Right to Life	2
2.Torture, Inhuman or Degrading Treatment or Punishment	5
3.Right to Liberty and Security of Person	5
4.Independence of the Judiciary and Fair Trial.....	6
5.Freedom of Thought, Conscience, Religion and Belief	9
6.Freedom of Expression, Hate Speech.....	13
7.Freedom of Association and Peaceful Assembly.....	16
8.Conditions in Places of Detention	18
9.Minority Protection, Protection from Discrimination, Aggressive Nationalism and Xenophobia	21
10.Discrimination of People with Mental Disorders in Institutions.....	24
11.Right to Asylum, Migrant Rights	26
12.Women’s Rights and Gender Discrimination	29

Regular parliamentary elections were held in Bulgaria on June 25, 2005. They were recognized as free and fair by international observers; however, some allegations were made of cases of double voting and vote-buying. The majority of votes in this election were won by the Bulgarian Socialist Party (BSP), which had up to then been in opposition, but not enough of a majority to allow the BSP to form a government on its own. Following long, drawn-out negotiations, the two parties that had governed the country up until the election, the National Movement of Simeon the Second (NMSS) and the Movement for Rights and Freedoms (MRF), were persuaded to join in forming the new government. The main priority of this three-member coalition is Bulgaria's accession into the European Union. In turn, throughout the year various EU institutions and groups of officials were quite active in observing and evaluating the country's preparedness for membership.

In October, the European Commission published its *Monitoring Report on Bulgaria's Progress Towards Accession to the European Union*.¹ In it, as in earlier reports, the Commission expressed serious concerns about the human rights situation in a number of spheres, such as the excessive use of force and firearms by law enforcement officials, inhuman conditions in several of the country's prisons and detention facilities, and the integration of minority groups and people with mental disorders. As in previous years, however, the report's conclusion was that Bulgaria fulfilled the criteria established by the Copenhagen European Council in 1993.

In 2005, there was progress in safeguarding some rights and freedoms in some spheres, e.g. improvement of the legislative framework for access to legal aid and protection from domestic violence. In others, however, like excessive use of force and firearms by law enforcement officials and the protection of the right to life, the situation marked a regress.

The European Court of Human Rights in Strasbourg issued 23 decisions in 2005 on cases regarding Bulgaria. In each of them, the Court found violations of various rights and freedoms guaranteed in the *European Convention on Human Rights* (ECHR). As in the previous years, the government did nothing to hold the institutions and officials who committed the violations accountable for their actions.

↔ **Right to Life**

The legislative and practical guarantees of state protection of the right to life in Bulgaria continued to be below the level of international standards in 2005. Article 80 of the *Interior Ministry Act* permits the use of firearms during the arrest of an individual who is committing or has committed even a petty crime, or to prevent the escape of an individual arrested for committing even a petty crime. This does not conform with Principle 9 of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*. This regulation was not changed in the amendments to the law that were made at the end of 2005 and beginning of 2006.

No progress was made during the year in the investigations of the 2004 killing of two Romani men, Kiril Stoyanov from Plovdiv and Boris Mihaylov from Samokov, by

1 European Commission, *Bulgaria: 2005 Comprehensive Monitoring Report*, Brussels, 25 October 2005, available at: http://www.europa.eu.int/comm/enlargement/report_2005.

police officers.² In the case of Kiril Stoyanov, as of February 2005 the Military Prosecutor had issued five orders to dismiss criminal proceedings due to lack of evidence that a crime had been committed. That same month the Plovdiv District Military Court also upheld the prosecutor's position on the matter and terminated the Stoyanov case. The Mihaylov case had been returned by the court for further investigation in 2004, and no progress was made on it through all of 2005.

As in previous years, in 2005 people continued to be killed and maimed as a result of excessive use of firearms by law enforcement officials. The BHC has information pertaining to four cases in which police officers took the lives of civilians, in which there is reason to believe that the officers overstepped their authority. In some of the cases, these actions were carried out during the process of investigation and remanding the guilty parties to structures within the justice system, but in others the behavior of the investigating officials was inappropriate and led to the police officers violating the law.

- On April 14, 2005, Sergeant D.V. from the First Police Precinct in Varna beat 37-year-old Julien Krustev to death. Late in the evening of April 14, the police officer was returning home from a nightclub when he found Julien Krustev sleeping in the entrance of his apartment block. He began to beat him because, it was ascertained later in the investigation, of an old refrigerator that had been stolen the previous day. Some of the beating took place in the presence of two other police officers, who did not react in any way. Forensic pathologists established that Krustev died of multiple internal injuries caused by the beating. Sergeant V. tried to lie to the police when the crime was discovered. He was arrested, charged with intentional murder and suspended from duty. The investigation in the case was concluded and brought to court by the Varna District Prosecutor; it is still awaiting scheduling of the trial. However, the other two police officers who eye-witnessed the murder have not been held accountable in any way.
- On August 14, 2005, Chief Sergeant P.V. from the 6th Police Precinct in Plovdiv, along with two civilians, beat 37-year-old Ivelin Vesselinov to death. Vesselinov had stuck a syringe needle in a young woman's leg near an apartment block in the Trakia residential district. Chief Sergeant V. and two other individuals apprehended the man and began to beat him. Later Vesselinov was driven in a patrol car to the 5th Police Precinct, where he collapsed. The emergency medical response team called to the scene pronounced him dead. Chief Sergeant V. was dismissed from his job as a disciplinary measure. An investigation was opened against him and the two other perpetrators, which had not yet concluded as of the end of the year.
- On November 10, 2005, during a planned police campaign code-named "Respect," 38-year-old Angel "Chorata" Dimitrov died during an attempt to arrest him on Doyran Street in Blagoevgrad. According to the Interior Ministry, five police employees – three officers and two sergeants from a special squad of the Blagoevgrad Regional Directorate of Internal Affairs (RDIA) – used force on Dimitrov in order to detain him, as he was resisting arrest. Shortly after he was handcuffed, Angel Dimitrov slid to the ground, and the emergency medical response team called to the scene pronounced him dead. However, eye-witnesses claim that Angel Dimitrov was not resisting, and that he was begging the police to stop beating him because he could not breathe. According to the forensic medical investigation results announced on November 11 by the chief of the Blagoevgrad RDIA, Gen. Bogomil Yanev, Angel Dimitrov suffered a cardiac arrest, and although the police had used force, his death

² *Human Rights in Bulgaria in 2004: Annual Report of the Bulgarian Helsinki Committee*, March 2005, available at: www.bghelsinki.org.

had nothing to do with their actions. Angel Dimitrov's relatives refrained from burying him and requested a new autopsy by a five-member panel of forensic medical experts, which was conducted on November 19. On December 7 it became clear that the second autopsy by the five-member panel of forensic medical experts showed that Angel Dimitrov died as a result of injuries sustained at the time of his arrest (a brain haemorrhage), caused by the police beating. On December 8, Interior Minister Rumens Petkov apologized to Angel Dimitrov's relatives for the incident. The director of the Blagoevgrad RDIA and the chief of the regional office of the National Service for Combating Organized Crime handed in their resignations. However, on December 14 the Sofia District Military Prosecutor surprisingly issued an order calling for a termination to criminal proceedings in the case. This act, which essentially legitimized police impunity for criminal acts, shocked society at large and provoked a flurry of commentary in the Bulgarian media. On January 8, 2006, a lawyer acting on behalf of the victim's family filed a complaint against the December 14 dismissal order with the Sofia Military Court. On January 19, 2006, the Sofia Military Court overturned the prosecutor's order and returned the case for further investigation.

- On December 20, in the village of Vlado Trichkov, near Sofia, special police forces fatally shot 30-year-old Harry Milkovski, in an operation to free British citizen Kristou Fanos. Fanos had arrived in Bulgaria on December 15, when he was met at Sofia Airport by his acquaintance Ali Deni, an Iranian citizen permanently residing in Bulgaria. Fanos was taken to a house in Vlado Trichkov, after which Deni and two other men, one of them Harry Milkovski, demanded a ransom of £ 44,000 from Fanos' son. The Interior Ministry had been alerted to the situation on December 18 by the British authorities. On December 20, the squad for fighting organized crime stormed into the house. Harry Milkovski was fatally shot in the ensuing gunfire, and died. An investigation into the case has been opened.

On July 6, the Grand Chamber of the European Court of Human Rights in Strasbourg issued a decision in the case of *Nachova et al. v. Bulgaria*. The case concerned the 1996 killing by military police of two deserting soldiers from a disciplinary battalion, to which they had been sentenced as punishment. Both the victims were ethnic Roma. Just as the first-instance court in Strasbourg had found in February 2004, the Grand Chamber found a violation of Article 2 (right to life) of the *European Convention on Human Rights*. The Court also found a violation of Article 14, discrimination on the basis of ethnic origin. The court determined that the use of lethal weapons against the two fugitives had not been necessary, and that the investigation of their killing had been inadequate. The court found discrimination due to the lack of investigation as to whether or to what extent racism played any role in motivating the use of firearms by one of the policemen.

↑ ↘ Torture, Inhuman or Degrading Treatment or Punishment

No serious legislative or law-enforcement changes were made in 2005 in response to domestic and international concerns regarding protection from torture, inhuman or degrading treatment and punishment. The changes that need to be made to the *Penal Code* in order to criminalize torture, as recommended in June 2004 by the UN Committee Against Torture,³ were not implemented. No initiatives were undertaken to change the

3 *Human Rights in Bulgaria in 2004: Annual Report of the Bulgarian Helsinki Committee.*

inhuman conditions in some of the country's preliminary detention facilities, prisons, and psychiatric institutions.

The BHC continued to receive credible complaints of torture and abuse of people detained by the police. At the end of 2005, BHC monitors carried out a survey of inmates in three prisons (Plovdiv, Pleven and Belene) about the conditions of their detention and preliminary investigation. The survey sample was representative of the three prisons, but not of the penal system as a whole. It included prisoners serving sentences on convictions that had already taken effect, whose pre-trial proceedings had begun after September 1, 2004. In comparison with a similar survey conducted in the same three prisons in 2004, the new survey revealed a trend of a slight increase in complaints of unlawful use of physical force in police stations following arrest (17% of those surveyed, compared with 11%). There was no increase in complaints of unlawful physical force at the time of arrest (which remained steady at 17%). The rising trend, as well as the high percentage of those complaining of unlawful use of physical force in itself, are a cause for serious concern. Some of the prisoners described cruel acts of torture and abuse. As in the previous survey, the results showed that such practices vary significantly among individual regions.

On January 18, the European Court of Human Rights in Strasbourg issued a decision in the case of *Kehayov v. Bulgaria*. In it, the Court found that there had been a violation of Article 3 of the ECHR, due to the conditions in which the applicant had been held during his preliminary detention in the investigative detention facility in Plovdiv, where he was held for some six months in a cell measuring 10.5 sq. meters with three other people, without being allowed any out-of-cell activities. On June 9, 2005, the Court issued a decision in the case of *I.I. v. Bulgaria*, in which it again found a violation of Article 3 of the ECHR, again due to the conditions in an investigation detention facility, this time in Shumen. The applicant was held there in a cell measuring six square meters with two or three other detainees; the cell was dark, damp, and had poor ventilation. The detainee was not allowed any out-of-cell activities.

←↘ **Right to Liberty and Security of Person**

The European Court of Human Rights issued nine judgments against Bulgaria in 2005 for violations of the right to liberty and security of person. For the most part these were cases predating the criminal procedure reforms that took effect at the beginning of 2000, having to do with the powers the prosecution and the investigative services used to have that were removed by that reform package, as well as the excessive length of pretrial proceedings. In several cases the Court pronounced the arrest of the persons detained as having been unlawful, due to violations of domestic law.

The new *Health Act* took effect at the beginning of 2005. Its aim was to bring the procedure for involuntary commitment and treatment in psychiatric institutions into conformity with international standards for protection of the right to liberty and security of the person. The new law stipulates that all forms of commitment for treatment in a psychiatric hospital must be court ordered, except in emergency cases when commitment may be carried out at the discretion of a physician. It distinguishes between the order to commit a patient and the order for treatment, and requires that the court determine whether the person being committed is capable of providing informed consent for treatment. The law also forbids treatment during the period of expert evaluation and restricts the use of physical restraints on patients. A special regulation requires the personal presence of the person being committed at the time of the hearing on

involuntary commitment and treatment, as well as the mandatory participation of an attorney.

The BHC monitored compliance with the new law in 2005 and published a special report.⁴ In it the organization established that there were serious problems with the law's application, resulting in the arbitrary commitment of people to psychiatric hospitals.⁵

Throughout the year, the placement of people in social care homes for people with mental disabilities also continued to be a serious problem, with regard to the right to liberty and security of person. These placements are made through an administrative procedure, with no court oversight, and as the BHC has observed on many occasions in the past, they are often arbitrary.

Another problem monitored by the BHC throughout the year was the placement of children in reform schools, pursuant to the amended *Juvenile Delinquency Act*.⁶ The BHC monitoring discovered some positive effects of the new legislative regulations. However, alongside these, the BHC found quite a few cases of arbitrary and unlawful placement in such institutions.

→ 2 Independence of the Judiciary and Fair Trial

Judicial system reform was one of the leading political themes of 2005, both in the country's domestic political life and from the point of view of the accession of the Republic of Bulgaria to the European Union. Some of the main criticisms leveled at Bulgaria by the European Commission and by the representatives of a number of EU member countries had to do with the effectiveness of the country's judicial system. The criticisms concerned the preliminary proceedings in the criminal justice system and the lack of any effective counter measures to prevent corruption in the judicial system. The Bulgarian government's main response to these criticisms came with the adoption of a new *Criminal Procedure Code* in June 2005⁷ and the drafting of amendments to the section of the *Constitution* relating to the judicial branch, prepared at the end of the year. Over the course of 2005 the National Assembly (parliament) also passed new laws regarding the provision of free legal assistance and the introduction of private court executorships, as well as several fairly insignificant amendments to the *Judicial Branch Act*.

However, the main problems regarding the way in which the administration of justice functions in Bulgaria remained unchanged in 2005. They concerned the lack of sufficient guarantees of the court's independence from institutional or private interests; the inefficiency of preliminary proceedings in criminal cases; the excessive length of certain court procedures; the excessive length of the preliminary investigations in criminal cases and the low level of efficiency in the procedures for implementing court decisions in civil cases. Also in 2005, active discussion continued with regard to making structural changes in the judicial system in order to facilitate overcoming the numerous

4 *Inpatient Psychiatric Treatment and Human Rights in Bulgaria in 2005*, Report by the BHC, Sofia, 2005.

5 See below: **Discrimination of Mentally Disabled People in Institutions.**

6 *In the Name of the Institution: Reform Schools in Bulgaria*, Report by the BHC, Sofia, 2005, available at: www.bghelsinki.org.

7 The new *Criminal Procedure Code* becomes effective in April 2006; the main changes to it have to do with the transfer of preliminary investigations from the investigative service to the police.

management problems that have accumulated in the system. One of the initiatives taken in this direction was the request for an interpretation of the *Constitution* that the Supreme Court of Appeals filed with the Constitutional Court in June 2005. This request was aimed at getting the Constitutional Court to revise its Decision No. 3 of April 10, 2003,⁸ in order to overcome, at least in part, its consequences. With its April 10, 2003 decision, the Constitutional Court put up serious obstacles to the effective reform of the judicial system, in the form of the court's decision requiring such reform to be carried out exclusively by a Grand National Assembly. Unfortunately, in its new decision at the request of the Supreme Court of Appeals,⁹ the Constitutional Court stood firm in its severely limited interpretation of the possibilities for amending the section of the *Constitution* concerning the judicial branch. Thus, although the political parties represented in parliament admitted to the necessity for structural reform, they restricted their proposals for amendments to the *Constitution* exclusively to some of the powers held by the justice minister and the possibility of removing the prosecutor general or the chief justices of the country's supreme courts from office by decision of a 2/3 parliamentary majority. The proposed amendment that would have allowed for the dismissal of the chief justices of any of the supreme courts provoked the justified criticism that in the event it were passed, it would open a possibility for unacceptable interference by the parliament in the work of the courts.

There was no significant change over the past year in the work of the leadership of the judicial system, as embodied by the Supreme Judicial Council. Although at the beginning of its term, the members of the council having been appointed in 2004, it did not succeed in implementing a more effective model for the management of the judicial system. In a number of cases it was held hostage by institutional conflicts between the courts and the prosecutors. One positive change was provoked by a decision from the Supreme Administrative Court, according to which the *Judicial Branch Act* requires that the council hold its sessions publicly. However, there were no serious positive changes in most of the main spheres of the council's work. The procedure for appointing and promoting magistrates is still not based on rules that clearly only allow appointments or promotions exclusively based on the qualifications, professionalism and ethics of the magistrates in question. Several magistrate appointments provoked serious public criticism, as they were clearly the result of selling influence within the system and nepotism, rather than the individual qualities of the respective magistrates. The Supreme Judicial Council's effectiveness in overcoming corruption issues also lacked any significant developments. There was even a certain degree of regression, resulting from a Supreme Judicial Council decision that its anticorruption commission could not conduct independent investigations in cases of suspected corruption.

The two positive steps taken in 2005 towards guaranteeing an accessible and fair court process were the changes made in the system for free-of-charge legal assistance and the introduction of private court executorships. The system for free legal aid was changed with the adoption of the new *Legal Assistance Act*, which was passed in September 2005 and took effect as of January 1, 2006.¹⁰ The newly-adopted law seriously broadens access to free legal representation in civil cases, as it is the first time the nation's legislation has provided for free legal assistance in all sorts of civil disputes, except for commercial or tax cases. The chief pluses of the new legislation are its designation of a

8 Interpretive Decision in Constitutional Case No. 22 of 2002, in which the Constitutional Court determined that only a Grand National Assembly could make changes to the structure of the judicial branch.

9 Decision No. 8 of September 1, 2005, in Constitutional Case No. 7 of 2005, (published in the *State Gazette*, issue 74, September 13, 2005).

10 *Legal Assistance Act* (Publ. *State Gazette*, issue 72, amended in *State Gazette*, issue 105 of 2005, in effect from January 1, 2006).

separate budget for legal aid and the establishment of an independent agency to manage it. There are, however, still a number of unresolved issues connected with the way in which the new system functions, as well as the scope of its applicability in criminal cases. Legislation was also passed with regard to another significant problem in ensuring effective access to the courts, having to do with the execution of court judgments. In May 2005 the Bulgarian parliament passed the [Private Court Executorships Act](#),¹¹ which created the possibility for private court executorships; this is expected to improve efficiency in the execution of court decisions. However, this law also needs a number of additional actions to be taken in order to ensure its effective application.

Once again in 2005, the European Court of Human Rights in Strasbourg issued a large number of judgments against Bulgaria, in cases in which it found violations of the right to a fair trial. In all of the 10 decisions it handed down in such cases in 2005, the court found violations of Article 6 of the *European Convention on Human Rights* (ECHR); the grounds for finding the country in violation were the requirement that criminal or civil proceedings and the appeal of administrative decisions related to the disbursement of social welfare or disability funds be concluded within a reasonable period of time. The European Court of Human Rights also determined, in several of its judgments, that Bulgarian legislation's lack of a separate procedure for filing complaints about the excessive length of court proceedings constituted a separate violation of the right to effective means of protection, per Article 13 of the ECHR.

Also in 2005, the same court issued many judgments finding Bulgaria in violation of the right to a fair trial, as well as violation of the requirement that criminal and civil proceedings be conducted within a reasonable period. In several of the cases in question, proceedings had gone on for more than 11 years (*Sidjimov v. Bulgaria*, January 27, 2005, criminal proceedings) or more than 10 years (*Todorov v. Bulgaria*, January 18, 2005, civil proceedings). In two other cases (*I.D. v. Bulgaria*, April 28, 2005, and *Mihaylov v. Bulgaria*, July 21, 2005), the Court found violations of Art. 6 of the ECHR, due to the lack of judicial review of decisions issued by the Labour-Expert Physicians' Commissions (LEPC) in Bulgaria, a problem that was subsequently resolved in the jurisprudence of the Supreme Administrative Court.

† 2 Freedom of Thought, Conscience, Religion and Belief

The year 2005 saw no legislative changes in the sphere of citizens' rights to freedom of thought, conscience and religion. The government's policy with regard to the chief violation of citizens' religious rights during the entire period since 1989 – the forced "unification" of the two branches of the Orthodox Church via the takeover by police of about 100 churches being used by the so-called "alternative Synod" – did not change in 2005. No steps were taken to restore the status quo prior to the events of July 20, 2004;¹² i.e., the reinstatement of the priests who had been thrown out of their positions, returning the churches and other spaces taken away to those who had been running them before the police raid of the summer of 2004, the removal of the provisions discriminating against non-Orthodox Christian religious organizations from the *Denominations Act*, for that law to be substantially overhauled or replaced by a new one,¹³

11 [Private Court Executorships Act](#) (Published *State Gazette*, issue 43, May 20, 2005; effective from September 1, 2005).

12 For more details, please see *Religious Freedom in Bulgaria in 2004: Special Report of the Tolerance Foundation and the Bulgarian Helsinki Committee*, available at: www.bghelsinki.org.

13 A detailed analysis of the flaws in the *Denominations Act* may also be found in the above report.

and the taking of measures for the peaceful restoration of the unity of the Bulgarian Orthodox Church (BOC). There is no indication that the Bulgarian courts have undertaken any action whatsoever to hold accountable the instigators or the perpetrators of the police raids of more than 100 Orthodox churches. For over a year and a half now, priests from the so-called "alternative Synod" have been holding services in an "open-air church" – under an awning erected on the site where Georgi Dimitrov's mausoleum used to be.

On 11 May the Sofia City Court registered Mustafa Alish Hadji as chief mufti of the Muslims in Bulgaria. This decision was appealed by his opponent Nedim Gendjev, and in December the Court of Appeals issued a judgement according to which the Denominations Directorate at the Council of Ministers had to register Gendjev as chief mufti. In spite of this, the directorate later issued a document that Hadji was chief mufti. Some observers saw in this yet another attempt for political interference in the internal organization of the Muslim denomination.

This past year also saw no significant progress in the process of returning to religious organizations property confiscated from them by the Communist regime, despite the explicit provision to that effect in the new *Denominations Act*.

The year was also characterized by the emergence and parliamentary success of a new extreme nationalist party, Ataka [Attack], which openly propagates not only against minorities, but also against so-called "sects." This political force considers the types of religious groups usually referred to as "new religious movements" to be "dangerous sects," and wants the government "to take decisive measures against them." In an article stating the party's position, published in the newspaper *Attack* on October 25, 2005, an MP from that party, Pavel Chernev, wrote: "Our campaign against the Jehovah's Witnesses is only the beginning of a broader political and societal campaign that Attack intends to undertake, against the sect invasion in Bulgaria..." because of "a number of unsolved crimes, including some murders, that seem to be religious in character and lead back to cults and other such groups currently existing in Bulgaria."

More than 80 cases were filed with the European Court of Human Rights in Strasbourg in 2005 regarding the police actions of July 20, 2004. They were filed directly with the Strasbourg court, because the takeover of the churches occurred on the orders of the prosecutor; such orders, according to Art. 118, Para. 3 of the *Judiciary Act*, are excluded from the possibility of appeal in the Bulgarian courts.¹⁴ According to Luchezar Popov, chair of the board of directors of the Institute for the Principles of Law and the attorney representing the applicants, there are 800 people represented by the complaints (36 of them priests, eight church employees, 35 parish wardens and 721 laypersons). The complaints claim violation of Art. 9 of the *European Convention on Human Rights and Fundamental Freedoms* (ECHR) and the *First Additional Protocol* to the *Convention*. This is without a doubt the largest case ever filed with the European Court of Human Rights by Bulgarian citizens, so far. On January 17, 2006, Mr. Popov told a representative of the BHC in an interview that he has been assured by the Court in Strasbourg that the case will be handled as expediently as possible.

14 According to Art. 118, Para. 3 of the *Judiciary Act*, the prosecutor may "carry out actions to reverse unlawful acts and in urgent, pressing cases, to restore rights that have been violated arbitrarily." Such actions cannot be appealed in the courts, nor can they be overturned by a prosecutor of higher authority, because there is no higher-ranked prosecutorial power than the Prosecutor General of the Republic of Bulgaria.

The religious rights of several "non-traditional religious movements" were also violated during the year 2005. Two of the violations were particularly significant.

In the first of these, on November 25, 2005, when directing questions to the minister of internal affairs, Rumen Petkov, Attack MP Pavel Chernev exhorted him to have "the special services take such entities as the Jehovah's Witnesses under their control and supervision", since in his opinion they fell under Articles 108 and 109 of the *Penal Code*.¹⁵ Instead of responding to the provocational claims of MP Chernev, the minister of internal affairs declared that "...the Jehovahites [sic] continue to fail to meet the obligations undertaken by them and to take advantage of every attempt at government intervention, in order to discredit the Republic of Bulgaria and to file cases with the International [European] Court of Human Rights in Strasbourg." He went on to say that the MP's question was "more than appropriate, in light of the actual situation in which we now find ourselves." The minister also added that he "unreservedly supported" the first part of Mr. Chernev's question, in which he stated that "the denomination falls under the purview of Art. 108 and 109 of the *Penal Code*," because "the religious group spreads propaganda advocating refusal to take blood transfusions, predicting the coming of the end of the world, and advocating refusal to comply with the secular leadership of the government." Mr. Petkov also called for "certain legislative measures" to be taken, "which would guarantee the protection of human rights in our country, but would also guarantee the sort of hygiene (!) you are talking about, and regarding which, as I already said, I fully support you."¹⁶ There is no indication that the Minister of Internal Affairs has ever retracted these statements, nor that he ever extended an official apology to the Jehovah's Witnesses.

In the other major incident, on October 26, 2005, the Interior Ministry forbade the entry into the country of the famous Korean preacher, Dr. Sun Myung Moon. Dr. Moon was supposed, in the course of a world tour of 100 cities, to found the Bulgarian branch of his new organization, The Federation of Universal Peace. The reason given for the ban on his entry was the "complicated situation in the country" following the previous day's murder of the well-known banker Emil Kyulev. The financier's murder was part of the gangster war that has been going on in the country for many years now. Obviously, the Reverend Moon had nothing to do with this crime; nor was concern for the foreign visitor's personal safety the reason for denying him entry. In the several days immediately preceding his arrival, extreme nationalist groups had carried out a vicious campaign seeking the denial of permission for him to enter the country, and it appears that the Interior Ministry decided that it had to honor their wishes. Not only that, the organizers of Moon's visit never received any document regarding the ban on his entry. Therefore, it cannot be appealed in the manner provided for by law.

Throughout the year there continued to be instances of administrative penalties for the distribution of religious information on the streets. On July 12, 2005, the Plovdiv Municipality fined Hans Amon, a Jehovah's Witness, 200 leva (100 Euro), because on March 28, 2005, he had been "distributing brochures with religious content in a public place."¹⁷ In December, a Plovdiv court upheld the fine and an appeal is now pending with the Regional Court.

15 These are the articles criminalizing the dissemination of "fascist or other antidemocratic ideology or one encouraging the forcible overthrow of the public and state structure established by the Constitution of the Republic of Bulgaria," as well as "the formulation or management of an organized criminal group that has the goal of committing a crime per this section."

16 *Transcript of the 53rd session of the 40th National Assembly*, November 25, 2005.

17 Plovdiv District Court Decision No. 360, on Case No. 1442, December 20, 2005.

The BHC has also received reports of the unjustified interrogation and hindering of oral religious proselytizing by police officers or municipal officials in Plovdiv, Stara Zagora, Veliko Turnovo and Pernik.

In April 2005, a group of Mormons from Pleven was forbidden to distribute brochures with religious content on the streets of the city. According to the chairman of the board of directors of the Institute for Legal Principles, Luchozar Popov, a lawsuit has been filed in this case.

In the course of the year, the BHC was also informed about several cases of discrimination on the basis of religious identity. In October, a company in Veliko Turnovo publicly announced that it was refusing to accept German intern Kristina Engel, who arrived as part of a regularly contracted exchange program, because she had stated that she was a Jehovah's Witness. The victim filed a complaint with the Anti-Discrimination Commission.¹⁸ In October 2005, two protestant preachers were attacked by Muslims in the town of Gotse Delchev as they were distributing invitations to an evangelical film.¹⁹ Another such incident took place on August 4, 2005, in the village of Grohotno, near the town of Devin, when some evangelist students distributing biblical-themed films were greeted with a protest demonstration led by the local imam, as a result of which the village's mayor withdrew the permission that he himself had granted to the group to distribute its films.²⁰

Cases of discriminatory and hate-spreading behavior on the basis of religion by several media outlets also continued. The Skat television station, known to be a mouthpiece for the Attack party, conducted a systematic propaganda campaign against so-called "sects," as did the aforementioned newspaper, *Attack*. As the result of instigation by Skat TV, and especially by the show *Parallax*, hosted by the known die-hard "sect" opponent, TV journalist Valentin Kassabov, residents of the Burgas neighborhood Meden Rudnik protested the October 2 inauguration of a building belonging to the Jehovah's Witnesses, on the pretext that it was "a danger" to their children and that the religious organization had lied to them, by failing to inform the population what purpose the building would be used for. On October 18 and 19, rocks were thrown at the building, and on October 23 the BSP MP from Burgas Stoyko Tankov announced in parliament that he would "file a complaint with the prosecutor about the unlawful house of worship of the Jehovah's Witness " in his city.²¹ There were also other cases of the flames of religious hatred being fanned by the media: articles in *24 Chassa*, shows on Nova Television, etc.²²

The practice of unequal treatment of minority religions with regard to access to the nation's airwaves continued. As a rule, the major nationwide TV networks only broadcast programs geared towards Orthodox Christians (the exception is one Sunday-morning program on the Bulgarian National Radio station Hristo Botev, which discusses other religions in addition to Orthodox Christianity, but in a purely informational tone).

18 For further details see: Rositsa Stoykova, "Jehovah's Witnesses File Complaint with Anti-Discrimination Commission," *Obektiv* magazine, issue 126, November 2005.

19 Reported by Pastor Nikolai Nedelchev, president of the *European Evangelical Alliance*, quoted in *Religious Freedom in Bulgaria, Romania and Turkey: In Depth*, a report published in November 2005 by the Dutch organization *Jubilee Campaign NL*, p. 13.

20 *Ibid.*, p. 12.

21 *Compass* newspaper, issue published October 24, 2005, "BAP Complains to Prosecutor about Jehovah's Witness House of Prayer".

22 For example, "Dangerous Cult Sows Miracles," *24 Chassa* newspaper, July 16, 2005, as well as the Nova Television morning show on December 5, 2005, on the topic of "Dangerous Cult Discovered in Sofia," et al.

For the fifth year in a row, the United Church of God's application to receive a radio-station license was denied by the Council on Electronic Media (CEM), due to a "lack of technical feasibility." Similarly, while Voice of Peace, an evangelical radio station in Sliven, does have a programming license issued by the CEM, it does not have a technical one and thus cannot operate. However, there are other radio stations operating in the same city without a technical license. There are court cases pending in both matters.

As in previous years, the practice of putting up barriers to foreign missionaries attempting to work in Bulgaria also continues. The Jehovah's Witnesses, along with other minority religious groups, have complained that they have to wait several times longer than usual for their missionaries to receive visas validating their stay in Bulgaria. In December 2004 two German missionaries were denied entry into Bulgaria, with no explanation given.

↓ ↘ **Freedom of Expression, Hate Speech**

The situation with freedom of expression in the country did not mark any significant progress in 2005. The same problems, such as inadequate and discriminatory media regulations, the use of criminal procedures to intimidate journalists, and corruption, resulting in a narrowing of the scope of public debate in many media outlets, continued to exist. Anti-minority hate speech increased significantly in several media outlets over the course of the year; not only did these media, as they did last year, routinely mention the ethnic origin of the perpetrators of crimes if they were members of minority groups, but they also openly incited ethnic hatred and discrimination. The officially existing regulatory mechanisms, as well as those established by the media outlets themselves, failed to respond to this problem in an adequate manner.

In February, the full five-member panel of the Supreme Administrative Court (SAC) dismissed the complaint filed by the former Director of the Bulgarian National Television (BNT) network, confirming the lawfulness of his dismissal from the post. And while until then media experts had been drawing a picture envisioning a dual directorship, with Kiril Gotsev restored to his post to run BNT together with the newly-appointed Ulyana Prumova, after the SAC handed down its decision they fell silent. There are many possible reasons for this strange metamorphosis in the behavior of the media, but none of them is favorable to the "independent" media system. Even Gotsev himself sharply curtailed his own public statements. He needed to make a stir in the media in order to turn his enemy, the CEM, into a public evil. Afterwards, he made up with his former enemies, becoming a technical consultant for the CEM, so he no longer needed the publicity. Thus, the media had been used to serve private interests. Even if those private interests did sometimes coincide with the public interest, the media turned out to be nothing more than a forum for airing them - flattering themselves as having been the ones who presented the issue to their audience. The scent of the little deal struck between Gotsev and the CEM was not picked up by the media as indicating anything amiss. Reporters did not have the courage to dig into the matter. The CEM, for whom Gotsev had been the blackest of demons, took the naughty boy back into the fold. Gotsev, on the other hand, went back to work for those he had lambasted publicly as being totally unprofessional. It turned out that the newspapers were no longer interested in this former scandal.

Throughout 2005 the CEM continued to respond inadequately to the increasingly strong expressions of xenophobic and racist speech in several electronic media outlets. Quite a few cable TV networks, and especially the Skat cable TV station, broadcast daily

or weekly shows that frequently committed serious violations of the *Radio and Television Act* (RTA), which forbids such broadcasts.²³ In sharp contrast to 2003, when, in total contradiction to freedom of speech standards, the CEM took the Den TV off the air because of Nick Stein's show *From the Telephone to the Microphone*,²⁴ this time the CEM failed to react at all. Despite various reports from human rights and Roma organizations of violations not only of the RTA, but also of the *Anti-Discrimination Act*, the media watchdog did not take any of the actions required of a regulatory body. Not only that, the council itself committed an act of discrimination, when in January it denied the request of a group of Macedonians that Macedonian-language programming be broadcast on the national television network. Further evidence that BNT is still far from being a truly public TV network is provided in a broad-based study on the topic of "Television Across Europe: Regulation, Policy and Independence," conducted over the course of two years by the European Monitoring and Advocacy Program, with the support of the Open Society Institute. The researchers' conclusions regarding what kind of television it is that we watch were published in a voluminous report in October 2005.²⁵ It makes clear the fact that not only in Bulgaria, but in the broader European context, market-driven mechanisms in and of themselves cannot and should not determine the future of the public electronic media. To this end, the issue that comes to the forefront is that of the bodies regulating the media, which should be fully independent institutions, and should also have enough funding and authority to monitor stations' performance and the degree to which they are in compliance with the applicable laws. Alongside this, expectations towards the public electronic media continue to progress in the direction of establishing mechanisms for guaranteeing the transparency of their budgets – especially in terms of the ways in which public funding is expended. The report's most important points regarding the public character of BNT turned out to be the weak presence of investigative journalism, as well as particularly poor presentation of issues pertaining to certain ethnic minorities. The report's conclusions clearly indicate that the electronic media outlets owe a debt to the public, since they present a picture that is too spare, one-sided and not particularly interesting to its audience, giving far too much space to traditional stereotypes, negative attitudes and speculation. The only exception to this in Bulgaria is the Turkish-language stations of the Bulgarian National Radio network (on short- and medium-wave frequencies, but with a low listenership), one 10-minute daily bulletin on BNT (broadcast at 5:00 pm, not during prime time), and several local TV stations. The electronic media outlets in this country still do not understand its different ethnic groups, members of which are as a rule not represented on their editorial staffs. As for the widespread idea of organizing specialized programming for those groups, that would doom to failure the entire idea of reflecting diversity. Instead of being present as an integral part of overall programming, presenting the main issues of the day in Bulgarian society, in which these matters are of the utmost importance, specialized programming would consign them directly to low viewership. At the same time, they are alien to the members of such groups, both in terms of the subject matter and the means of expression. Another, separate aspect of the study is connected with the level of the news on BNT. There is an evident and deepening process of the "dumbing down" of content and increased tabloid character of its news shows.

The use of Bulgarian criminal legislation against journalists continued in 2005. At the initiation of the prosecutor's office, the criminal case against journalist George Buhnici (who filmed illegal cigarette sales in the Russe-Giurgiu border zone in 2004)

23 See below: **Minority Protection, Protection from Discrimination, Aggressive Nationalism and Xenophobia.**

24 *Human Rights in Bulgaria in 2003: Annual Report of the Bulgarian Helsinki Committee*, March 2004, available at: www.bghelsinki.org.

25 See the report by the Open Society Institute's EU Monitoring and Advocacy Program, *Television Across Europe: Regulation, Policy and Independence*, Budapest, 2005.

dragged on for the entire year.²⁶ Finally, on December 27 he was acquitted by the Russe Regional Court. During the year the BHC was also involved with the criminal libel case against Kalina Gruncharova, a journalist from the newspaper *Voice of Tutrakan*. In the fall, the district court sentenced her to pay a fine of 500 leva (250 Euro). The decision was later appealed, but the case had not concluded by the end of the year.

During the second half of 2005, the BHC conducted a study of the interrelationships between Bulgaria's print and electronic media and its PR agencies. The study uncovered widespread corruption practices at several of the media outlets examined, including direct payments to journalists for articles written or stories broadcast, without their being identified as having been paid for. It also revealed the direct but not explicit financial dependence of the editorial offices of some media outlets upon certain economic and political groupings. Such practices, according to the conclusions drawn by the researchers, limit the scope of public debate quite severely, excluding from it those groups within Bulgarian society who have no access to power and money.

The situation regarding access to information did not change significantly in 2005. The Access to Information Program (AIP), a nongovernmental organization working in the public interest, assisted 408 citizens and corporate entities in their attempts to receive information from government institutions. The types of information being sought in these cases included:

- Information about the activity of government officials related to contracts with private companies, public procurements, and the privatization process.
- Information contained in public registers, such as the Register of Property Owned by Persons Holding High Government Offices, the Public Register of Hunting Licenses Issued and Renewed, and the Register of Experts Licensed to Conduct Environmental Impact Assessments.
- Information about the activity of the public financial supervision agencies (information about financial audits, the expenditure of budgetary funds, internal financial checks, etc.).
- Information regarding the environment was also actively sought.

In some cases, state officials refused to release information and based the refusals on formal, rather than legal arguments. In order to address this trend, the AIP supported a court case filed by a nongovernmental organization in Razgrad. The mayor of Razgrad had refused to release information to it, on the pretext that the NGO had failed to present evidence of its existence as a legal entity. That refusal was appealed in the regional court, which declined to review the complaint. The AIP legal team appealed the regional court's action in the Supreme Administrative Court, which issued a decision in which it ruled that everyone has the right to information, without it being necessary to provide evidence of anything whatsoever.

In other cases, state officials refused to release information from public registers, citing the protection of personal data as the basis for refusal. It subsequently turned out that the disclosure of such information could determine the existence of possible malfeasance or corruption (for example, in determining the possible impact that building a new nuclear energy plant could have on the environment, on the hunting of wild animals, etc.). Another issue that came to light while working on such cases was the understanding that the personal information recorded in public registers is not subject to protection.

26 *Human Rights in Bulgaria in 2004: Annual Report of the Bulgarian Helsinki Committee.*

During 2005 the AIP supported its clients in ten new cases significant to the securing of access to public information, selected according to the following criteria:

- High public interest of the information being sought (the cases of journalist Zoya Dimitrova v. the President of the Republic of Bulgaria; journalist Krassimir Krumov v. the Shumen District Governor; *Novinar* newspaper v. the Ministry of Regional Development and Public Works).
- Possible influence on policy at the national level (journalist Hristo Hristov v. the National Intelligence Service; Hristo Hristov v. the Supreme Judicial Council; *Novinar* newspaper v. the Ministry of Regional Development and Public Works; Yuriy Ivanov v. the State Internal Financial Supervision Agency).
- Interpretations of the law, significant to the enforcement thereof (the *Za Zemyata* [For the Earth] Ecological Association v. the Ministry of Finance; the Ecological Information and Education Center v. the Council of Ministers; Kiril Terziyski v. the Ministry of Finance).
- Other information that could be of importance (journalist Zoya Dimitrova v. the President of the Republic of Bulgaria; journalist Hristo Hristov v. the National Intelligence Service; Kiril Karaivanov v. the State Reserves and Wartime Reserve Forces Agency).

✎ Freedom of Association and Peaceful Assembly

Freedom of association and peaceful assembly in Bulgaria were subject of three decisions handed down by the European Court of Human Rights in Strasbourg in 2005. All three concerned Macedonians in Bulgaria, and in all three cases the Court found violations of Article 11 of the *European Convention on Human Rights*. On October 20, two decisions were published: those in the cases of *UMO Ilinden and Ivanov v. Bulgaria* and *UMO Ilinden PIRIN v. Bulgaria*. In the former, the court found a violation of Art. 11 of the ECHR due to a series of refusals by local authorities to allow peaceful public gatherings of Macedonians in Bulgaria, a practice that has been going on continuously since the early 1990s, and which was already condemned by the Court in its decision in the case of *Stankov and UMO Ilinden v. Bulgaria*.²⁷ In the second case, the Court found a violation of Art. 11 of the ECHR due to the 2000 ruling of the unconstitutionality of a political party whose membership was predominantly Macedonian, and from which several candidates had been elected to local government posts. According to the Bulgarian Constitutional Court, the party posed a threat to the country's national security. In support of that theory, the Constitutional Court cited several statements by the party's activists and leaders, which it said were separatist in nature. However, the Strasbourg Court dismissed these allegations and stated that banning the party was a disproportionate measure, which did not conform to the standards of a democratic society. On November 24, the Strasbourg Court issued its decision in the case of *Ivanov and Others v. Bulgaria*. In it, the Court found a violation of Articles 11 and 13 of the ECHR, due to the refusal to allow Macedonians in Bulgaria to hold a demonstration in Sofia in August and September of 1998.

As in previous years, the reactions on the part of the authorities to public gatherings of Macedonians were mixed. On April 24, Macedonian activists were able to commemorate the anniversary of the death of Yane Sandanski unhindered, at the Rozhen

²⁷ *Stankov and the Unified Macedonian Organization (UMO) Ilinden vs. Bulgaria*, Application Nos. 29221/95 and 29225/95), Decision issued on October 2, 2001.

Monastery. An official delegation from the Republic of Macedonia also attended the celebration. On July 31, UMO Ilinden activists held a demonstration at the Samuil Fortress near Petrich, despite having been denied permission by the mayor of the municipality. The police, while they did allow the event to take place, filmed the entire event with a video camera. Three individuals who had been attending such an event for the first time were subsequently called to appear at the police station and intimidated.

On September 12, Blagoevgrad police prevented UMO Ilinden from placing a wreath on the city's monument to Gotse Delchev. Officers confiscated four flags and one poster from them, and later also took a wreath with a banner on it, which they demonstratively crushed on the square where the monument is located. Boris Pavlov was fined for an administrative infraction. The police cited an order from the city mayor forbidding the gathering; however, the participants were not given any such document. They had to submit a formal request in order to receive a copy of it afterwards. On their way back from Blagoevgrad, several Macedonian activists were attacked by unidentified civilians, as they were trying to place flowers on a monument in the village of Cherniche. Rocks and insults were hurled at them from a car whose license plate had been covered in plastic, in order to obscure the numbers on it.

There were also several other violations of the right to peaceful assembly in Bulgaria during the year. On August 22, the mayor of Varna refused to grant permission to hold a gay parade, under pressure from the social committee of the Orthodox Christian Metropolitanate of Varna and Velikopreslav. The committee had threatened to hold an anti-gay parade. There were also several incidents during the mass protests regarding the garbage-collection crisis in Sofia, in which there are grounds to believe that the authorities and private security personnel used unlawful force and threats in order to break them up. On July 8, in a nighttime raid on protesters in the Suhodol district, several individuals were injured by being beaten with batons and kicked. On September 17, police stopped several individuals in the village of Mramor, near Sofia, and made them sign sworn statements stating they would not participate in the following day's demonstration across from the garbage-compacting platform. On November 23, private security guards beat protestors who were trying to prevent the storage of garbage in the Chukurovo mine shaft, near the village of Gabra, in the Sofia region.

← Conditions in Places of Detention

Prisons

In 2005, the number of inmates in Bulgarian prisons and prison hostels continued to increase. As of December 31, 2005, they numbered 11,436 – an increase of 565, in comparison with December 31, 2004. The number of convicted persons awaiting sentencing also showed a slight increase in 2005, and as of December 31, 2005, had reached 389. The same was true for the number of indicted persons awaiting the outcome of their trials, which as of that same date was 1,691. As in the preceding year, the average increase of about 5% in the inmate population of Bulgaria's prisons was mainly due to the increased number of inmates whose sentences took effect. These trends were played out against a background in which the authorities declared more than once that the amount of registered crime was decreasing, as well as the amount of crime determined by surveying the victims of crimes.²⁸

28 See the report by the Center for the Study of Democracy, *Crime Trends in Bulgaria: Police*

Following the broadening of the legislative possibilities allowing for the placement of convicted prisoners in open or transitory dormitory facilities, there was a noticeable, although insignificant, increase in the number of inmates placed in them.

The number of inmates being held in open dormitory facilities increased over the previous year, from 632 to 696. There was a greater increase during that same period in the number of inmates held in transitory dormitory facilities: from 1,273 to 1,439, as of December 31, 2005. However, these increases in the numbers of inmates held in open or transitory dormitory facilities did not solve the main problem in the penal system in 2005: ongoing severe overpopulation in most of the prison facilities for repeat offenders, as well as in two of the country's closed dormitory facilities, the Kremikovtsi, near Sofia, and the Atlant, in the town of Troyan. This made the system as a whole one of the most inhumane penal systems in the region, as established at the time of the joint NGO missions that visited prisons and detention facilities in 2004 and 2005. There are no standards imposed by Bulgarian legislation with regard to the amount of living space per inmate in the country's penitentiaries, and they are obliged to accept all of the inmates sent to them by the criminal justice system. In most jails, each prisoner gets less than two square meters; the amount of open space is even less than one square meter. In the most severely overpopulated prisons, there are double bunk-beds, or even triple bunk-beds. The worst overpopulation is in the Plovdiv city prison, where the number of inmates is several times greater than the prison's maximum capacity, even with the most minimal consideration of their human dignity. The prisons in Pleven and Varna are also in urgent need of measures to ease their overpopulation, increase the amount of personal space and improve lighting and ventilation in the cells.

The buildings that make up the country's prison system are extremely old. The Sofia prison was built 100 years ago, while the buildings of the prisons in Lovech, Pazardzhik, Vratsa, Stara Zagora, Varna and Burgas were built in the 1920s and 1930s. The living spaces, toilet facilities and common areas are extremely dilapidated, and the floors, walls, ceilings and windowpanes are in exceptionally poor condition. The cells in the Sofia, Vratsa, Pleven, Stara Zagora, Plovdiv, Sliven, Varna and Burgas jails, as well as those in the Troyan dormitory facility, do not have their own toilets. During the nighttime lockdown, the inmates use shared buckets for the relief of their physiological needs. There are also serious hygiene problems raised by the use of common toilet facilities, in which there is no hot water, nor any possible way to wash and dry bedding and clothing.

The lack of adequate penitentiary facilities, as well as their centralized nature, has forced the General Directorate of Penal Institutions to impose a system of districting, in which a significant proportion of the country's inmates serve their sentences hundreds of kilometers away from their places of residence. Thus, for example, convicted juveniles from all over the country are placed in the correctional home in the town of Boychinovtsi, while there are first-time offenders from the Varna region serving their sentences in the penal dormitory facility in the city of Troyan; i.e., more than 300 km away from their homes. Both first-time and repeat offenders are apportioned in a similar way, with a similar result, in several other regions, as well. The prison in Sliven is the only one in the entire country where women are sent. In such cases, the ability of the convicts and their relatives to have visits or other social contact is severely limited.

Following the restructuring of the medical centers in some of the country's prisons, there was no significant change in the medical services provided to inmates. The proportion of complaints about the quality or quantity of medical services in the prisons

even increased slightly in 2005. The healthcare problems seen in the prisons have to do with funding the procurement of medicines and payment for examinations by specialists, for uninsured inmates. One of the most serious problems facing the contemporary penitentiary system is posed by the continuously growing number of inmates addicted to narcotics. Despite the specificity of the profile of those who commit crimes, in terms of such addictions, the legal situation of the inmates in this category does not afford them access to any supplementary medical or rehabilitative care; for this reason, the risk of their becoming repeat offenders after having served out their sentences is very high.

There is also an ongoing trend of an increase in the proportion of inmates needing specialized psychiatric treatment. The medical personnel working in the prisons are not trained in detail as to how to document the consequences of self-inflicted injuries, rapes and beatings, thus hindering the efforts of the appropriate authorities to conduct investigations on complaints filed by victims.

In late April and early May, 37 foreign citizens serving sentences in the Sofia city prison went on a hunger strike. They were protesting their unequal treatment in comparison with Bulgarian inmates, with regard to the possibilities for early release on parole, interruption of their sentences, passes for annual holiday leave, and transfer to open or transitory dormitory facilities, as well as the slowness of the procedures for carrying out transfers to their home countries. The main obstacles to such transfers are the large amounts of the fines they owe to the Bulgarian state. There are no restricting provisions in Bulgarian legislation with regard to foreign convicts, for which reason some of the foreign citizens' demands that their situation be alleviated could possibly be satisfied.

Representatives of several legally-registered religious denominations were allowed to conduct religious services for prison inmates. In several prisons, social workers responsible for organizing rehabilitative activities each had to work with 80-100 inmates or even more, thus hindering effective individual and group work. The relatively high proportion of illiterate and semi-literate inmates calls for a methodical, comprehensive program of literacy and professional courses; however, such courses are only offered on a very limited scale.

Disciplinary practices are not consistent among the various individual prisons. Despite the precise regulatory apparatus regarding this, the practices in place for reporting violations, the imposition of punishment or solitary confinement, and procedures for appealing such, were cause for complaints from inmates. The living conditions and possibilities afforded for recreation in some high-security zones need to be improved. With the exception of the Burgas prison, where the use of physical force and a bad attitude on the part of the supervisory guard staff towards the inmates remained a problem that has yet to be overcome, inmate complaints of the use of physical violence and corporal punishment (using implements such as batons) did not increase, in the rest of the prisons.

Investigative Detention Facilities

In 2005, the BHC published the results of the several-months long monitoring it conducted of Bulgaria's investigative detention facilities.²⁹ According to the conclusions

²⁹ *More About the Investigative Detention Facilities*, Report by the BHC, Sofia, 2005, available online at: www.bghelsinki.org (in Bulgarian).

drawn by the BHC, this is the system in which the aggregate conditions of detention in Bulgaria are the most inhuman and degrading, and which is in the most urgent need of reform.

There were 51 investigative detention facilities in use across the country in 2005. The total number of suspects being held in them varied from 850 to 900, on any given day of the year. Once again in 2005, there were periods of time when the number of people being held in several of these facilities exceeded their capacity. This mainly pertained to the facility in Plovdiv, and the border detention facilities in Svilengrad and Slivnitsa, where overpopulation is a serious problem. In October 2005, the detention facility in the town of Elhovo, which was one of the nine underground facilities, was shut down; at that same time a newly-built facility meeting all of the requirements for respecting the rights of suspects was put into use.

The material conditions in Bulgaria's investigative detention facilities do not meet international standards for the treatment of inmates. Despite the repair work and lighting, ventilation and hygiene improvements carried out at many of the detention facilities, overall conditions in the cells are far worse than those in the country's prisons. A large part of the facilities do not have adequate spaces for spending time in the open air, nor for conducting visits with family and loved ones, as well as with legal representatives. The suspects are not provided with any possibility of engaging in any kind of activity, nor with access to television or radio broadcasts. The medical services in the investigative detention facilities are not integrated within the national healthcare system, as a consequence of which a number of problems have arisen with regard to specialized medical services and dental care for the suspects held in them. Reform of the detention system has been stimulated by the court cases filed and won in domestic and international courts by detained persons, in which they complained about the conditions in the cells in which they had been held.³⁰

On the initiative of the Prosecutor General's Office, in February 2005 prosecutors from the Supreme Cassation Prosecutor's, Military Prosecutor's and Regional Prosecutors' Offices conducted a mass inspection of all of the country's investigative detention facilities, and of the groups of suspects and indicted persons being held in prisons. Several of these prosecutor visits to investigative detention facilities were conducted jointly with teams of researchers from the BHC. The purpose of the inspections was to assess the degree to which the rights and living standards of suspects were being accounted for. The conclusions reached following the inspection were that the detention facilities in Petrich, Gabrovo, Lom and Svilengrad are absolutely unsuitable for use, and that with the exception of a few detention facilities and the separate groups of suspects and indicted persons being held in prisons, none of the remaining investigative detention facilities meet the European requirements with respect to minimum possible amount of space, time spent outdoors, individual toilet facilities, lighting, and so forth. The prosecutors' report recommended that the underground detention facilities, with no windows and no toilets or washroom facilities, be removed from service, since they are not appropriate for reconstruction. The recommendation also pertains to detention facilities that are on the top floor of the buildings in which they are located, since there is no way to build toilet or washroom facilities or knock out spaces for windows in them.

30 See above: **Torture, Inhuman or Degrading Treatment and Punishment.**

↳ **Minority Protection, Protection from Discrimination, Aggressive Nationalism and Xenophobia**

In the parliamentary elections held in June, the extreme nationalist coalition Ataka [Attack] won representation in the Bulgarian parliament. In its election campaign, Attack used aggressive racist and xenophobic propaganda, mainly targeted at the Bulgarian Roma population. More than once, the coalition's leader and other representatives described the Roma as a criminal community and a threat to ethnic Bulgarians, due to their high birth rates. To a lesser degree, Bulgarian Muslims were also the target of the group's attacks, as well as representatives of other, smaller religious minorities. At the end of July, during the process of negotiations to form a government, in which the Movement for Rights and Freedoms (MRF) was involved, members of Attack staged a demonstration in front of parliament, shouting "We won't let Stanishev put fezzes on our heads!" The leader of Attack is an extreme anti-Semite and holocaust denier. The party's entry into parliament stimulated negative stereotyping of the Roma in the media, and made any kind of integration policy difficult. In practice, no such policy was conducted at all by the Bulgarian government over the course of the year, despite its declarations of support for the Decade of Roma Inclusion, which was officially launched in Sofia at the beginning of February.

Discrimination against and the social exclusion of the Roma continued to be seen in the spheres of education, housing policy, employment, healthcare, and the administration of justice. On August 31, more than 20 homes were demolished in one of Sofia's Roma neighborhoods, on orders from the regional mayor's administration. No housing was provided for the people left homeless by that action. In September, the administration in another region of Sofia attempted to tear down an entire Roma neighborhood, in existence since the start of the 20th century, without securing any shelter for the people who would be left with no roofs over their heads. That attempt was temporarily halted by the prosecutor's office and the court, until the legal and factual situation could be clarified. However, the threat of demolition remained hanging over those Roma families.

After the formation of a new government following the June parliamentary elections, nationalistically motivated protests were held in several Bulgarian cities, against the appointment of regional governors from the MRF, one of the three partners in the new ruling coalition, which traditionally wins the votes of people from ethnic minorities. In August, an initiative committee from the Pazardzhik region stated that Sergey Stanishev should read out the order appointing the district governor in the church at Batak. At the same time, 15 Burgas-based organizations announced that if any "Turks or Bulgarians from the MRF's quota" were appointed for the Burgas region, a civil war would break out. At demonstrations in Varna, those present shouted the slogan: "We don't want a governor with a turban!" Such nationalistic attitudes even spread to the ruling coalition's local partners. Thus, the leader of the Bulgarian Socialist Party (BSP) in Panagyurishte, Nedyalka Naplatanova, announced that "an MRF governor of the Pazardzhik region would be a mockery of the traditions of the Fourth Revolutionary District." [Formed during the Ottoman rule]

In 2005, court enforcement of the *Anti-Discrimination Act* (ADA) continued. Several significant decisions were handed down in courts of the first instance in cases involving the protection of Roma from racial discrimination. For the first time – not only in Bulgaria, but in all of Europe – a court found that there was segregation of Roma children in a school. The Sofia District Court ruled that School No. 103 in the Roma neighborhood of Filipovtsi in Sofia, the pupils of which are exclusively Roma, was racially segregated in violation of the law, and that the parties responsible were the

minister of education and the municipal authorities. The court found that these officials, who are duty-bound not to allow segregation in the educational system, had been negligent, and that the negative consequences to society of that situation were enormous. The suit had been filed on behalf of the European Roma Rights Center, an international organization working in the public interest, on the basis of the special right that such organizations have to file antidiscrimination suits in the public interest.

In January 2006, the Office of the Chief Prosecutor was condemned for the first time by a court for discrimination against ethnic Roma. The Sofia District Court's decision finding discrimination set a precedent, in its ruling that statements made by a magistrate that express a negative, disparaging attitude towards the Roma as an ethnic group constituted a violation of the *Constitution* and of international law. The prosecutor's racist statements had been made in the text of an official prosecutor order ending the investigation into the death of a Romani man. The suit was filed and won by the brother of the deceased man, who had also suffered along with his mother in the tragic incident. The case revealed a significant problem in the Bulgarian criminal justice system, which systematically discriminates against the Roma, leaving them defenseless when they are the victims of crime, but pursuing them with disproportionate harshness when they are accused of perpetrating crimes.

The country's courts ruled against a number of commercial enterprises that own public spaces such as cafes, restaurants and hotels, for their ethnically-motivated refusals to serve Roma, as well as private employers, for refusals to hire Roma people for job positions. Among those found guilty of refusing Roma people access to public services was such an important public institution as the Bulgarian Academy of Sciences, as well as the director of the academy's institutional hotel. The director had refused to allow some Roma to use the hotel's services, openly stating that he did not accept Roma as customers.

Another important public institution, St. Kliment Ohridski University of Sofia, was sued for discrimination against persons of homosexual orientation. In the country's first decision finding homophobic discrimination, the Sofia District Court found that university officials had unlawfully refused homosexual men access to the university's sauna, explicitly indicating the victims' sexual orientation as the reason for the refusal. This case was also filed in the public interest by a human-rights organization, as were quite a few others.

These court cases received quite a bit of media interest, and in a number of instances, the media showed an understanding of their importance and support for their goal of fostering reform. In 2005 the media began to examine the question of equality, difference and anti-discrimination legislation more and more often; this helped contribute to a societal change in the direction of increasing equal opportunity and tolerance. More than one year late (with that delay constituting a violation of the ADA), the Anti-Discrimination Commission finally began functioning in 2005, taking complaints and reports of discrimination. However, the commission did not pronounce a single decision over the course of the year.

Despite the positive developments in the sphere of court protection from discrimination, as a practice discrimination in this country did not decrease in 2005. On the contrary, the situation of xenophobic propaganda and incitement to racial hatred worsened considerably during the election campaign of the Attack coalition, and its subsequent entry into parliament. The radical incitement to ethnic hostility and fomenting discrimination spread by Siderov and his followers did not provoke any reasonable reaction on the part of the main political forces, nor from the public

institutions having the authority to enforce the law. Civil society was the only entity that found the resources to mobilize itself against this aggression against lawfulness and human dignity. Dozens of organizations active in all different sorts of areas, such as minority rights, children's rights, women's rights, disabled people's rights, media reform, legal reform, healthcare, etc., banded together in a grass-roots coalition called Citizens Against Hatred, which filed a harassment and discrimination suit against Volen Siderov, pursuant to the ADA. This socially significant case is due to be heard and decided by the Sofia District Court in 2006.

↔ ♫ ♫ Discrimination of People with Mental Disorders in Institutions

In 2005 the BHC conducted its second large-scale investigation of the psychiatric hospitals and clinics to which mentally ill persons are committed for mandatory treatment, pursuant to the *Health Act*, and for involuntary treatment, pursuant to the *Criminal Procedure Code*. In its previous study of this sort (in the year 2001), the BHC noted some fundamental flaws in Bulgarian legislation regulating the procedure for committing patients to psychiatric institutions for mandatory treatment, which were in sharp contradiction to existing international due process standards. These failures consisted of the lack of a legal regulation requiring a preliminary evaluation by a medical expert of the psychiatric condition of the person being held for evaluation in a psychiatric institution, the lack of any statutory text explicitly specifying the authority of the prosecutor to hold people in such institutions for evaluation, and the lack of any possibility for the person being held to appeal the lawfulness of such detention in court.

The impetus for the study the BHC conducted in 2005 was the entry into force on January 1, 2005 of the new *Health Act*, which contains statutory guarantees against arbitrary commitment. The new law makes it mandatory that an expert evaluation be made of the psychological condition of the person whose commitment is being sought and of the danger he or she poses, that the entire procedure be initiated in a court, and that the individual be afforded the opportunity to appeal the decision ordering involuntary commitment. In addition, it introduced a requirement that the person being committed have legal representation during the court proceedings. It also set maximum time limits for the preparation of expert evaluations and the scheduling of court hearings, and reduced the mandatory treatment period from six to three months. However, the new law once again failed to clearly formulate the relationship between the existence of a mental illness and the danger posed by it that a crime might be committed. Of course, this allows for the continuation of the harsh practice of the courts, which did not correspond at all to the legal provisions of the past, either. Now it leads to the involuntary commitment of people who pose a danger to their own health or that of the people around them, without any actual proof being provided of the probability that these people would commit a crime. On the other hand, the new law fails to call for mandatory treatment as a means of protecting the individual in question, because the only basis provided for mandatory commitment and treatment is the danger of a crime being committed.

Over the course of the study they conducted in 2005, BHC monitors visited 11 state psychiatric hospitals and eight mental health dispensaries in Bulgaria. The BHC discovered various practices in the psychiatric hospitals' and courts' implementation of the new involuntary treatment procedure, which, to one degree or another, violated the rights of mentally ill patients. Still, a much smaller number of patients were held unlawfully and subjected to involuntary treatment than in the past. The practice of

keeping patients initially committed for voluntary treatment and essentially holding them against their will also remained unchanged, and the hospitals continued to fail to comply with the law's provisions regarding obtaining informed consent for treatment from involuntarily committed patients. The disturbing practice of arbitrary immobilization and isolation of patients in psychiatric hospitals continued, in direct contradiction to a regulation that was explicitly drawn up in 2005, as well as to the international standards in this sphere. During their visits, the BHC researchers also discovered several cases of deaths in psychiatric hospitals that had not been properly investigated by law enforcement officials.

With regard to material conditions, the mental health dispensaries are in much better condition than the state psychiatric hospitals, which are still in miserable condition – especially the wards for severely psychotic patients. The hospitals in Byala, Lovech, Patalenitsa and Karlukovo are in the most urgent need of refurbishment. The rooms, dining halls and toilet facilities in them have crumbling plaster, are sparsely furnished, do not have running hot water, and have very bad hygiene.

Throughout 2005, the BHC also continued to take an active interest in the conditions in social care homes for people with mental disorders. Unfortunately, the two institutions regarding which the Council of Europe's Committee for the Prevention of Torture made urgent recommendations after carrying out visits to them in 2003 – the home for mentally ill women in the village of Razdol and the home for mentally ill men in the village of Pastra – have yet to be closed down. In the rest of the homes to which the BHC made periodic visits in 2005, no progress was observed with respect to patient care and quality of life, aside from a few material improvements. The mentally disabled people in social care homes are not provided with any opportunities for effective reintegration into society.

Mentally disabled people continue to be treated inhumanely and degradingly, both in psychiatric institutions, which fall under the authority of the Ministry of Healthcare, and in social care homes for persons with developmental disability, which are under the authority of the Ministry of Labor and Social Welfare. Patients are subjected to forced treatment without the institutions duly obtaining their informed consent, and their treatment is limited to drug therapy. There are no actively-functioning, effective rehabilitation or social integration programs that could aid in the deinstitutionalization of the mentally ill, and no incentives are being established to attract highly qualified medical and other personnel into the mental healthcare system. All of this leads to the low quality of life and exclusion from society of these individuals.

The BHC 2005 study of psychiatric hospitals included evaluation of the fulfillment of several elements of the Ministry of Healthcare's policy on mental health in Bulgaria for the years 2004-2012. It designates as its main priorities the following:

- fighting the stigmatization of and discrimination against the mentally ill, in order to guarantee a lessening of the economic and social burden of mental illness;
- ensuring equal, adequate access to mental health care to all persons with mental problems; and
- safeguarding the human rights of the users of psychiatric services.

In so far as the provision of mental health services is still concentrated in the country's psychiatric hospitals and dispensaries, it is being conducted in contradiction to the reform measures mapped out; if there has been any sort of change, it is taking place

inconsistently, and is not being shared identically across the community of mental health professionals.

↔↔↘ **Right to Asylum, Migrant Rights**

During 2005 the BHC continued its observation and legal representation of asylum seekers, refugees and foreigners granted humanitarian status, with which it has been involved in for nearly a decade. The trend seen over the past few years on the international and regional scale, that of increasing government control of immigration and borders, has shifted the balance between such control and every individual's right to freedom of movement and choice of residence place, entirely in favor of the state, thus leading to an imbalance in national policy and practice that is harmful to the human rights of migrants: both immigrants and emigrants. For these reasons, the BHC broadened its activity in this area in 2005, with the start of a long-term monitoring program, examining legislation as well as practices in the sphere of immigration in Bulgaria.

In the area of asylum, the number of individuals seeking refuge in this country continued to decrease in 2005. Over the course of the year, asylum applications were filed on behalf of 822 individuals from 38 countries. This is a 27% decrease in comparison to the 1,127 people from 42 countries who applied in 2004, and a decline of over 53% in comparison with the 1,549 people from 38 countries who applied in 2003. The main reason for this decrease is the increased government control of the country's borders over both legal and illegal immigration, with efforts coordinated on both the local and regional level, in line with the process of Bulgarian accession to the EU.

The influence of the EU, via the institutional and direct financial support it provided, was one of the main factors in determining national policy and practices in this sphere. However, that influence was not always consistent, in terms of institutional development. In certain areas it had a positive effect, leading to amendments in the law that set a higher standard for the protection of the rights of asylum-seekers and refugees. Thus, the changes made in April to Articles 13, 15, 16, 34, 70 and 71 of the *Asylum and Refugees Act (ARA)* were certainly positive in character. Article 13 eliminated the possibility of the grounds for determining an asylum application to be "clearly unfounded" being utilized as resolute or exclusionary clauses, although Art. 17, Para. 2 of the ARA still allows this in certain circumstances. This, to quite a large extent, brought the country's national legislation into conformity with the 1951 *Convention on the Status of Refugees*. Article 16 of the ARA was amended to the same effect. Article 34 of the ARA was changed with a view to court practice in refugee cases, limiting the possibility of refusal to reunite a family solely on the basis of the assumption of an exclusionary clause per Article 12 of the ARA. Articles 70 and 71 of the ARA introduced the practice of taking into account the applicant's age after, rather than before, the registration of the asylum application.

However, there were other aspects in which the country retreated from standards previously established in its legislation and practices. Art. 8, Para. 2 of the ARA narrowed the definition of "family member," excluding an acknowledged refugee's elderly or infirm parents, unable to care for themselves. Art. 8, Para. 3 of the ARA rescinded the right of the spouses of recognized refugees to receive residency status as refugees, if the marriage was concluded after the granting of asylum. This leads to the unequal treatment of marriages concluded within and outside the country, thus constituting a violation of Article 8 of the *European Convention on Human Rights*. Article 25

of the ARA allows the replacement of a child's guardian/custodian with an official from the municipal social welfare service, thus lowering the standard of protection for children separated from their families and seeking asylum unaccompanied by their parents. Article 73 of the ARA made it lawful to conduct just one interview during the process of evaluating an asylum application, retreating from the standard previously imposed by the law and established precedent of a minimum of two interviews in the examination and resolution of individual cases.

Refugees' access to entry onto the country's territory and the associated protection by prohibition of return (*non-refoulement*) continued not to be guaranteed. There was no progress in the establishment of the planned regional offices of the State Refugee Agency at the country's main points of entry, the Kapitan Andreevo Border Station at Svilengrad and the Sofia airport. For this reason, there are no procedures for conducting accelerated processing of asylum seekers, thus guaranteeing them entry onto the country's territory.

Thanks to an agreement between the BHC and the National Border Police Service (NBPS), in 2005 the BHC renewed its observation of the detention facilities at the country's borders, including the ones for those arrested by the border police. As a result of this observation, it was concluded that due to a lack of functional transit centers for accelerated processing by the State Refugee Agency (SRA), or at least reception facilities for the detention of foreigners who are unlawfully present, the Migration Directorate of the Interior Ministry does not exercise any oversight over the persons submitting asylum applications at the border, nor over the entry of those applicants onto the territory of the country. As a result of the ongoing monitoring that was conducted, the NBPS undertook the obligation, totally inappropriate for that service, of detaining foreigners entering the country unlawfully for over 24 hours – even though this violates Article 71 of the *Interior Ministry Act* – when the persons seek asylum after arrest by the border police, preferring that to the worse alternative of returning them to the country from which they fled, in violation of Art. 33, Para. 1 of the *Convention on Refugees*. The SRA's systematic refusal to secure the transportation of such persons from the border to its existing facilities in Sofia and the village of Banya, in the Nova Zagora region, which is in violation of Art. 61, Para. 2 of the ARA, pursuant to Art. 58, Para. 2 and Art. 68, Para. 2, has led to delays in the registration, placement, and exercise of all of the other rights of those seeking asylum. The agency's administration continued to maintain its passive stance in this respect throughout 2005. It continued to review only those cases of persons seeking asylum at the border in which transportation was provided by the NBPS. Thus, in 2005 the SRA accepted for review only the 63 cases sent to it from the border by the border police, in which access to processing was only guaranteed because of intervention on the part of the BHC. In comparison, 59 cases were forwarded by the border police in 2004, 95 in 2003 and 151 in 2002. This decreasing trend is explained by the fact that the border police service tries to avoid registering asylum-seeker cases since, due to the abovementioned situation of the lack of cooperation on the part of the SRA, in such cases they have to undertake functions beyond those assigned to them by law, and because they lack the budgetary resources for the expenses associated thereto.

Despite the significant reduction in the number of new asylum applications submitted in 2005 (for 822 individuals from a total of 38 countries), only 86 of the registered applicants received asylum, of whom 78 persons were granted humanitarian status and eight were granted refugee status. The relative proportion of those acknowledged as refugees was thus extremely low: barely 10% of the registered asylum applications.

Freedom of movement is enshrined in Article 13 of the *Universal Declaration of Human Rights* and Article 12 of the *International Covenant on Civil and Political Rights*, which proclaim the right of every person to move about freely and choose his or her place of residence within the borders of any country, as well as the right to leave the territory of his or her own country and return thereto. In the domestic legislation, this right is mainly contained in Art. 35 of the *Constitution*, pursuant to its Art. 27, Para. 1 and Art. 26, Para. 2. Also in 2005, Bulgarian immigration legislation, policy and practices were characterized by a lack of an individual domestic policy regarding migration, especially in terms of economic emigration and immigration. The country completely followed the legislative trends and administrative measures adopted in countries with experience and traditions in the establishment of mechanisms for the administrative oversight of foreigners, with the strongest influence coming from EU legislation. This led to the introduction of a regulatory structure and practice of a number of restrictive administrative oversight mechanisms limiting the right of foreign immigrants to enter into and reside in the country and the right to leave the country freely of Bulgarian citizens who are economic emigrants, who have committed a violation of the administrative regime of residency abroad.

The entry and residency of foreigners were restricted by a series of conditions and prohibitions that were enforced in practice for the first time in 2005. Thus, for example, began the enforcement of the prohibition introduced in Art. 27, Para. 1 of the *Foreigners in the Republic of Bulgaria Act* (FRBA), against changing the basis of one's stay and a requirement of the "D" class of visa as an absolute condition for the granting to foreigners of permission for long-term residency, regardless of the reason for relocation. However, the enforcement of this regulation was conducted in violation of the law itself, since the immigration police required a "D" visa even in cases where the law provided exceptions: those of marriage to a Bulgarian citizen or to a foreigner with refugee status. However, the courts overturned this practice on the part of the administration and protected the right to family life, in accordance with Article 8 of the ECHR.³¹

The BHC also found violations of the rights of foreign immigrants in connection with the following: the lack of a suspensory effect, pursuant to Art. 46, Para. 4 of the FRBA, of appeals filed against the enforcement of involuntary administrative measures, with a view to guaranteeing the right of migrants to an effective legal defense, in accordance with Article 13 of the ECHR, when they have a court case pending; the lack of legal assistance for foreigners under administrative detention for deportation, in fulfillment of the guarantees provided for in accordance with Article 5 of the ECHR, and the waiver of court fees in such cases in order to prevent the possible denial of justice; the failure to recognize the rights as family members of all foreigners in factual cohabitation, rather than doing so only for those foreigners accredited to foreign diplomatic, consular, or commercial missions or the missions of intergovernmental organizations; the lack of a right to an active and passive vote in local elections or participation in local government on the part of long-term and permanent resident foreigners; the requirements in Article 71 of the *Employment Stimulation Act* with regard to unchangeability, inadmissibility, qualification, vacancy and fixed term as conditions for hiring foreigners under the legal conditions of labor or civil contracts; the requirement in Art. 24, Para. 1, Provision 2 of the FRBA of the creation of 10 jobs for Bulgarian citizens as a condition for granting residency permission on the basis of commercial activity and entrepreneurship; and others.

One of the main human rights issues in Bulgaria in 2005 was the treatment of foreigners unlawfully present in the country, especially those subject to involuntary

31 Supreme Administrative Court, Decision No. 1176 of December 23, 2005.

removal from the country (deportation). The involuntary detention of foreigners undergoing deportation proceedings varies in duration from five to eight months, and there are recorded cases of detention for over 12 months. Once again in 2005, the government was unable to shorten these lengthy detention periods by carrying out the timely deportation of such foreigners, but despite this continued to order involuntary detention rather than the milder measure provided for by law of daily signing-in. Detained foreigners are not given a copy of their deportation orders, neither in Bulgarian nor in translation, making it impossible for them to appeal within the stipulated deadline and hindering the preparation of their defense. In connection with these rights violations, in 2005 there were several cases of fundamental significance in which the Bulgarian courts determined that an excessive length of time without effective measures being taken for an individual's "deportation" has a bearing on the lawfulness of the very fact of his detention, and that it is the obligation of the officials in the interior ministry system to ensure compliance with the provisions of the ECHR, as well, in part, of its Art. 5, Para. 1, Section F.³²

↔ ↘ **Women's Rights and Gender Discrimination**

Without a doubt, last year's greatest achievement with regard to women's rights was the passing and entry into force of the *Protection from Domestic Violence Act* (PDVA).³³ In this regard we must acknowledge the key role played by the nongovernmental organizations that have been working on this issue for years, especially the foundation called the Bulgarian Gender Research Foundation (BGRF), in drafting the bill for the law, lobbying for its adoption and training police officers and judges with regard to its enforcement. According to organizations that provide social and psychological services for women victims of violence, the law, as evident from the problems associated with its adoption, is significantly more advanced than the traditional societal and institutional attitudes regarding non-intervention in "the private sphere." It constitutes an open, public admission of the fact that domestic violence is a serious social problem, not just a family or household one. As a number of studies have revealed, not only are patterns of violent behavior within a family replicated by the children who suffer or witness domestic violence, those children also become a risk group for forms of violence in the "public sphere," such as trafficking in women for the purpose of sexual exploitation.

According to 2005 data from the Animus Association, 73% of the cases in which the organization's help was sought were instances of domestic violence; from this we can conclude that it is the most prevalent form of violence against women in this country. Nongovernmental organizations working on domestic violence issues have observed an increase in the number of people seeking consultations with them in such cases; according to many of the organizations this is an indicator that the new law has provided a certain amount of publicity, and also stimulated victims to seek assistance.

Court practices with regard to the *Protection from Domestic Violence Act* has also provided some momentum. According to the BGRF of Sofia and Plovdiv, the total number of cases filed with the Sofia City Court under the PDVA was 80, 38 of which

32 Sofia City Court, Division III-A, Decision of February 16, 2005, on Admin. Case No. 3387/2004; Supreme Administrative Court, Decision No. 8364 of September 27, 2005 on Admin. Case No. 4302/2005.

33 Promulgated in the *State Gazette*, issue 27, March 29, 2005.

regarded in court decisions that came into effect; there were 40 cases filed with the Plovdiv District Court, in two of which the charges had been pressed by men against male defendants. The Demetra Association assisted in the filing of 23 cases under the PDVA with the Burgas District Court for urgent hearing; decisions were issued in 14 of them that have already taken effect. It is absolutely necessary that this positive tendency be maintained, and that the government make a clear, long-term commitment to fund programs for the prevention of and protection from domestic violence, and the establishment of a system for legal and social assistance for victims thereof. Unfortunately, however, there is a real danger that the state institutions responsible for this will once again rely on the nongovernmental sector to fulfill their obligations; up to now NGOs have been the only source of free-of-charge legal and social rehabilitation assistance for victims.

The selection and appointment of the members and headquarters of the Anti-Discrimination Commission took an excessively long time; the commission finally took its first steps at the end of last year, nearly two years after the *Anti-Discrimination Act* came into effect. This inevitably raised legitimate concerns of neglect of the issue and necessitated the speedy and effective implementation of a mechanism for the submission of complaints to the commission. At this time there are indications of a significant lack of court practice in cases of discrimination on the basis of gender, and it is expected that victims of such discrimination will take advantage of the accelerated procedure for complaining to the Anti-Discrimination Commission, as provided for by the law.

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