

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 28/10/2021

DH-DD(2021)1119

Document distributed under the sole responsibility of its author, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1419th meeting (December 2021) (DH)

Communication from an NGO (Bulgarian Helsinki Committee) (19/10/2021) in the case of VELIKOVA v. Bulgaria (Application No. 41488/98).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Document distribué sous la seule responsabilité de son auteur, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1419^e réunion (décembre 2021) (DH)

Communication d'une ONG (Bulgarian Helsinki Committee) (19/10/2021) relative à l'affaire VELIKOVA c. Bulgarie (requête n° 41488/98) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE
DEPARTMENT FOR THE EXECUTION OF JUDGMENTS
1419th MEETING OF THE DELEGATES DECEMBER 2021

19 October 2021



OBSERVATIONS

OF THE BULGARIAN HELSINKI COMMITTEE ON THE EXECUTION OF THE GROUP OF JUDGMENTS “VELIKOVA V. BULGARIA”

The Bulgarian Helsinki Committee (BHC) is a non-governmental human rights advocacy organization operating in Bulgaria since 1992. It provided representation in the proceedings before the Court in some of the cases in this group. For more than 25 years, the BHC has monitored legal and practical developments concerning torture and ill-treatment in Bulgaria from a variety of perspectives. It regularly monitors some closed institutions, including prisons, and reports its finding in submissions before local and international human rights bodies.

Most of the cases in this group concern deaths, torture and other ill-treatment, excessive use of force and lack of medical assistance during arrest and in custody, as well as inadequate investigation into those abuses. During the previous review of this group, the Committee of Ministers observed that in a number of cases the prescription period for criminal prosecution of the respective officials had expired due to the inaction of the authorities; that persons detained by the police in Bulgaria continue to run a considerable risk of ill-treatment; that legal assistance during police detention is not mandatory and covers a very small number of detainees; that the “exploratory interviews” at that stage may proceed in the absence of a lawyer; that medical examination upon detention is superficial, poorly recorded and does not involve a proper reporting mechanism.

On 1 October 2020, at its 1383rd meeting the Ministers’ Deputies adopted Interim Resolution on this group of cases. In it the deputies noted a lack of improvement in the incidence of physical ill-treatment of the persons detained by the police; insufficient implementation of the safeguards

against ill-treatment in police and penitentiary facilities; inadequate data gathering on ill-treatment; limited external monitoring by the Ombudsman and expert NGOs; no progress with introducing the crime of torture in criminal law. The delegates made a number of recommendations to address this unsatisfactory situation, including:

- Consideration of reopening of criminal investigation in several cases where it is still possible;
- Strengthening legal assistance during initial detention and introducing video recording of the interrogation of the suspects;
- Improving the promptness, quality and confidentiality of medical examinations and recording of injuries in police detention and penitentiary facilities;
- Introducing automatic notification of the Prosecutor's Office of complaints and medical findings of ill-treatment;
- Establishment of a comprehensive system of compiling statistics on ill-treatment;
- Supporting the independent monitoring of the Ombudsman and expert NGOs of all places of detention;
- Introducing judicial review of the refusals to open investigations;
- Criminalizing torture and extortion of a confession from a person who is not formally charged with a criminal offence;
- Ensuring the independence of the inquiries and investigations of allegations of ill-treatment;
- Suspension of police officers officially accused of ill-treatment.

In the present submission, the BHC addresses some of the issues outlined in the above recommendations, including legislative and institutional developments; the incidence of torture and ill-treatment in Bulgaria; the availability and the effectiveness of the safeguards against them. The BHC makes observations on some structural problems of the Bulgarian criminal justice system obstructing the fight against torture and ill-treatment during police detention. And, lastly, it makes some additional recommendations.

At present, the BHC is implementing a EU-funded project "Piloting Equality Data Collection in the Criminal Justice Systems across EU", together with several partner organizations in four EU member states. In the framework of this project, in the period June-October 2021, BHC researchers interviewed 704 convicted prisoners from 17 prisons and prison hostels accommodating male prisoners from all over Bulgaria, whose pre-trial proceedings started after

1 July 2019. In addition, the BHC researchers conducted numerous in-depth interviews with selected respondents focusing on their specific cases, including, among other issues, the circumstances of their ill-treatment in police custody. The BHC continues with interviewing and plans to conduct around 1 000 interviews in all the prisons of Bulgaria. But already at this point we have a representative sample of the male prisoners who were convicted and entered the Bulgarian prisons during the past year and a half. The present submission draws in large parts on this research.

1. Legislative and institutional developments in Bulgaria relating to combating torture and ill-treatment

Since October 2020, three governments changed in Bulgaria. Two of them were caretaker governments appointed by the President of the Republic to organize parliamentary elections. Two elections for parliament took place in April and in July 2021. None of the elected parliaments however was able to elect a regular government. The caretaker governments' main task was to organize the next parliamentary elections. The governments and the short-lived parliaments adopted limited measures in other spheres and none as a follow up to the recommendations formulated in the Interim Resolution. This is recognized also in the Government's addendum to the action plan of 8 October 2021. Thus, the legal framework regulating legal assistance during the initial detention and the safeguards against ill-treatment during arrest and police detention remained unchanged. No judicial review of the refusals to open investigations was introduced and no amendments were made in the Criminal Code to introduce a crime of torture or to criminalize extortion of a confession from a person who is not formally charged with a criminal offence. No legislative amendments were made to improve the effectiveness of the safeguards against ill-treatment.

On the practical side, in the period since October 2021 the system continued to function in the same way as before. There is no automatic notification of the Prosecutor's Office of complaints and medical findings of ill-treatment. Nor were police officers suspended when they were accused of torture. No system of compiling adequate statistics on police ill-treatment was put in place, other than the statistics compiled, as before, by the prosecution and the Ministry of Interior on police officers subjected to criminal and disciplinary measures for such offences. In their addendum to the action plan of 8 October 2021 the Government of Bulgaria reports of eight complaints of police ill-treatment, out of 237 registered in 2020 at the Ministry of Interior, which were found to be "fully/partially justified". This proportion of the registered to the

“justified” complaints, as well as the very number of the latter is by itself indicative of the gross disregard by the authorities of this very serious problem of the Bulgarian criminal justice system. In addition, the Government does not clarify what “justified” is supposed to mean in terms of a follow up to these complaints, i.e., how many of them resulted in criminal prosecutions, in convictions or in disciplinary measures.

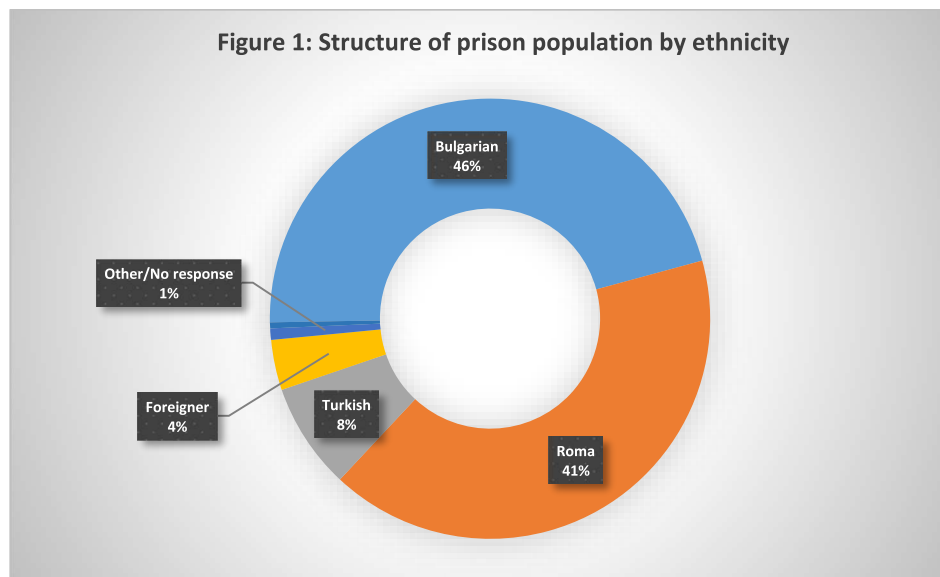
The Government’s assertions in their addendum to the action plan on medical checks are somewhat incorrect and misleading. They submit that “the detainees go through a mandatory medical check and in case of injuries the medical staff is duty-bound to report to the prosecutor”. In fact, there is a contradiction between different norms regulating this matter. Article 139 (2) of the Execution of Sentences and Pre-Trial Detention Act (ESPTDA) provides that the medical staff is duty bound to report to the prison or IDF governors who on their part have to report to the prosecutor. There is thus under that law no direct line and no duty of reporting by the medical staff to the prosecution. On the other hand, Article 117, para. 4 of the Rules and Regulations for the Implementation of the ESPTDA provides that in cases of traumatic injuries the medical staff “takes immediate action to notify the relevant prosecutor's office and to send the relevant documents and photographs”. In practice, medical staff rarely informs directly the prosecution and, in some cases, where it does (e.g., in the Varna IDF), it may be cautioned by the respective governor. More importantly, there is no obligation under the law for immediate medical check of the detainee within a fixed time period. This is why in some cases the medical checks take place a week or even longer after detention.

There has been no change in the modalities of the monitoring of the Ombudsman and expert NGOs of all places of detention. No steps were undertaken to provide for access of the expert NGOs, such as the BHC, to the police stations, psychiatric hospitals, social care homes and children’s institutions. The access to some of these institutions for the purposes of human rights monitoring, which the BHC had in the past, was withdrawn by two previous governments, because they disliked the organization’s findings and criticism. In fact, in 2020 and in 2021 the government imposed additional obstacles to the monitoring of the Ombudsman and the expert NGOs due to the restrictions imposed after the outbreak of the COVID-19 pandemic.

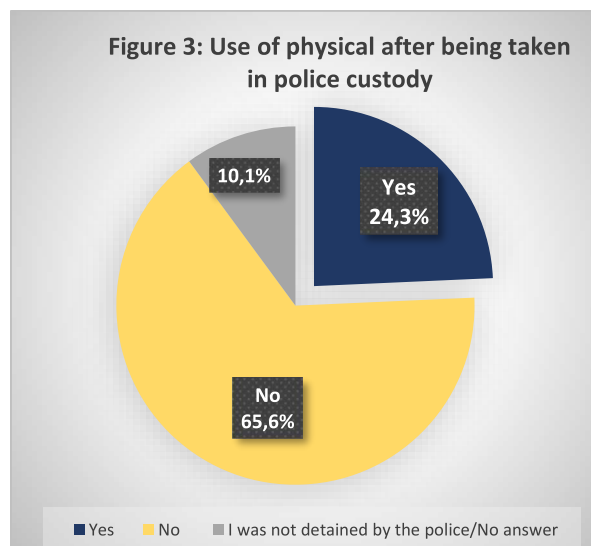
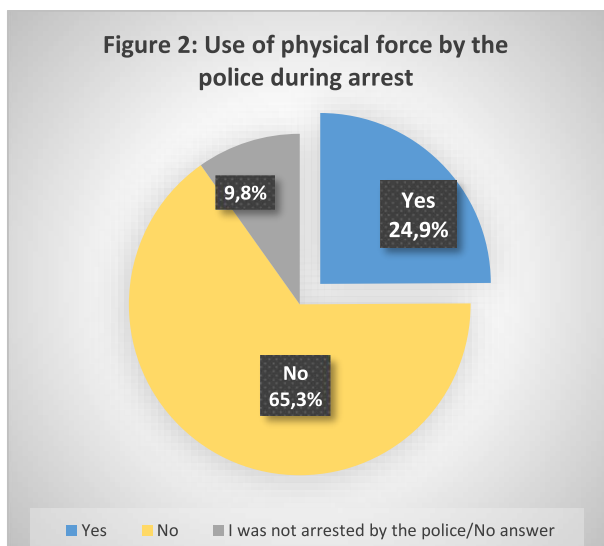
2. Incidence of torture and ill-treatment by police operatives in Bulgaria and safeguards against such abuses

The prisoners interviewed by the BHC researchers in 17 prisons and prison hostels in Bulgaria represent a mix of different criminal offenses, sentences, age groups, ethnic, economic and

educational backgrounds. The prison population in the sample is almost equally divided between ethnic Bulgarians and representatives of ethnic minorities (See Figure 1). Roma are heavily overrepresented among the prisoners with 41% in the sample against around 10% in society. This by itself is an indication of discrimination.

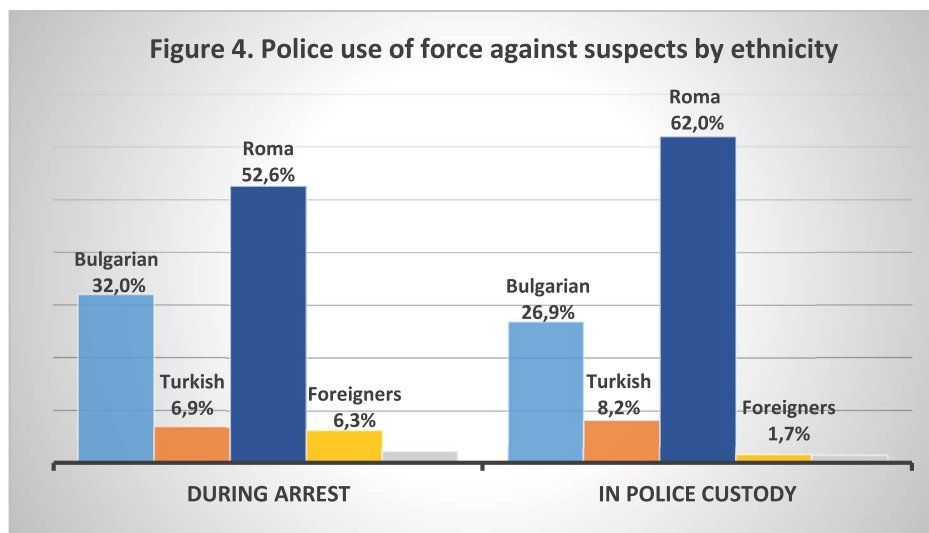


The BHC research revealed a serious problem with ill-treatment of persons suspected of having committed criminal offenses when they are arrested and during their 24-hour police detention. 24.9% of the respondents in the survey said that they had been ill-treated by the police during their arrests and 24.3% said that they had been ill-treated after they were brought in the police station (See Figure 2 and Figure 3). In the latter case the ill-treatment allegedly took place for the most part during their questioning by police operatives in order to extract incriminating information.



The combined share of those who report ill-treatment either at the time of their arrests or subsequently, when they were brought inside the police station, is 34.7%. This means that every third male suspect in Bulgaria, charged for having committed a criminal offense, who is subsequently convicted and sentenced to effective imprisonment, reports police ill-treatment. While the use of force at the time of the arrest may be justified in some cases, the use of force after the arrested person is brought inside the police station is very difficult to justify. Yet, the share of those who report ill-treatment at the time of their arrests is the same as the share of those who report ill-treatment inside the police station. Asked about the circumstances in which the force was used during arrest, many respondents describe situations, in which the use of force had been unnecessary, aiming for the most part at impromptu punishment for the suspect's crime or for his non-violent behavior at the time of the arrest.

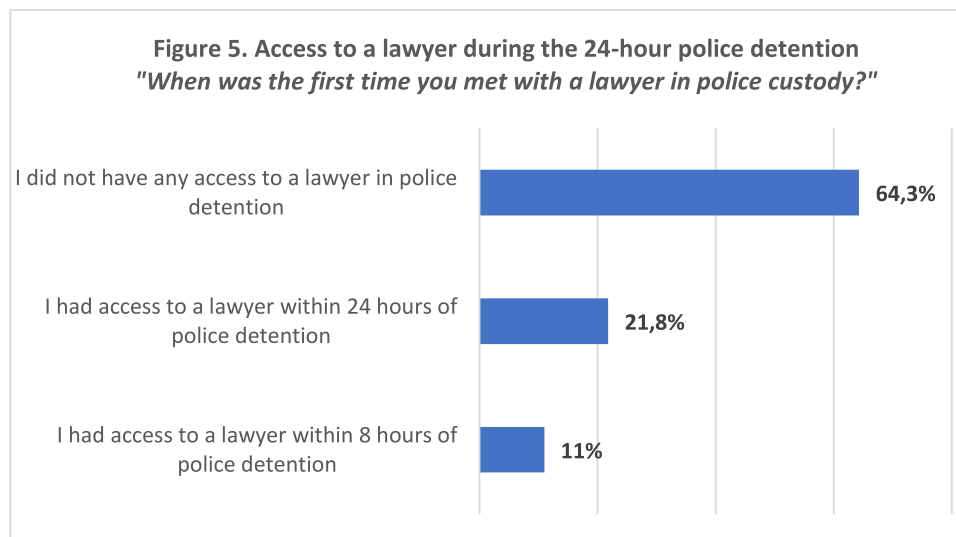
Police ill-treatment affects disproportionately different groups of suspects – mostly those who are poor, excluded and discriminated against. 52.6% of the Roma respondents in the survey report having been ill-treated during their arrests and 62% of the Roma respondents report having been ill-treated inside the police station (See Figure 4). This is a staggering disproportion and a clear case of racial discrimination in the Bulgarian criminal justice system. When interviewed in-depth about the circumstances of their abuse, many Roma said that during their ill-treatment they were also targeted with racist insults by the police operatives. Most of the suspects had not complained about these racist assaults. In the rare cases when they did, no investigation was opened. There is not one police officer in Bulgaria convicted under Article 131(1), pt. 12 of the Criminal Code – causing bodily injury with racist or xenophobic motives.



The methods and the severity of ill-treatment as reported in the in-depth interviews with selected respondents varies. Most often the police operatives use kicks, fists, truncheons or other hard objects (e.g. metal tubes) and apply them to the point where the detainee confesses or submits the necessary information. In some cases, this results in minor injuries, the visible traces of which go away after several days. But in other cases, the ill-treatment causes serious injuries – broken noses or jaws, or deep scars on the head or on the face, the traces of which were visible at the time of the interviewing, i.e. in some cases more than two years later. A number of respondents reported the use of electroshock devices, such as tasers. Several prisoners, interviewed independently of each other in the Burgas prison and the adjacent closed prison hostel in the town of Debelt, reported the use in one police station in Burgas of special electricity generators with wires attached to the fingers of the detainee on both hands, through which the police officers administer electric shocks by rotation of the generator's handle. Again, the electroshock from this hand-made device is used to the point at which the detainee confesses or submits the necessary information. This method of torture does not leave any visible traces.

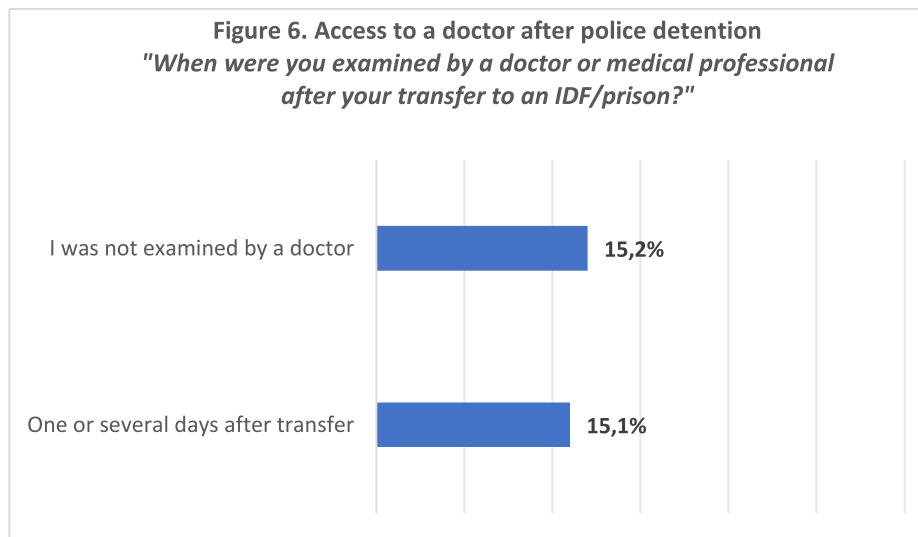
Access of the detainees to a lawyer during the 24-hour police detention is a serious problem of the Bulgarian criminal justice system, mentioned on a number of occasions by the CPT and by other international bodies. The BHC survey questioned about the access to a lawyer during the 24-hour police detention. 64.3% of the respondents in the survey who were detained in the police said that they had not had any access to a lawyer during their detention. Another 21.8% said that they were able to contact their lawyer at the end of their detention. These were for the most part detainees who had *ex officio* lawyers appointed before they were formally charged. The lawyers in such cases visit the detainees at the police station towards the end of their 24-hour detention in order to prepare for this procedural action and have no role in assisting them

during the “exploratory interview” and the concomitant ill-treatment. Thus, if we exclude the respondents who did not remember or gave no answer to this question for other reasons, we end up with only 11% of the respondents who said that they had access to a lawyer within 8 hours of their police detention (See Figure 5).



The situation with the access to a lawyer after the initiation of the pre-trial investigation is much better. Very few respondents said that they have not had a lawyer at that stage. Yet, in 56.9% of the cases this was an *ex officio* lawyer. This share in the case of the Roma detainees is much higher – 70.1%.

Another problem with the safeguards against ill-treatment is the access to a doctor immediately after the 24-hour police detention. In most cases this usually happens when the accused is transferred to an IDF with a prosecutor’s decree ordering his/her 72-hour detention. 15.1% of the respondents in the BHC survey (20% of those who had been detained in an IDF) said that they had been seen by a doctor at the IDF one or several days after their transfer. Another 15.2% (20% of those who had been detained in an IDF) said that they had not been seen by a doctor at all (See Figure 6). In-depth interviews with selected respondents reveal that the medical checks at the IDFs are cursory at best. In most cases they consist in just asking the accused on whether he had health problems and whether he takes medications on a regular basis. Very rarely the IDF medical staff would pay attention of complaints of police ill-treatment. In such cases it would usually advise the detainee to refrain from lodging a formal complaint.



3. Structural problems of the Bulgarian criminal justice system obstructing the fight against torture and ill-treatment

The BHC research indicates that for the most part ill-treatment by the police inside the police stations during the 24-hour police detention has a specific purpose – extracting of incriminating information during the “exploratory interview” allowed by Article 10(1), pt. 1 of the Ministry of Interior Act. Article 72(1), pt. 1 of the same law provides that police may detain persons for whom there is data that they have committed a criminal offence. However, this and the “exploratory interview”, which follows, are not part of the formal criminal proceedings and the safeguards under the Code of Criminal Procedure (e.g., the obligatory appointment of a lawyer for the detainee) do not apply. Therefore, although detainees are informed of their right of access to a lawyer and even of their right to free legal assistance, the “exploratory interviews” are conducted by and large without a lawyer and without the presence of any third party. The law allows this even where the detainee had expressed a wish to have a lawyer.

It is in these *tête à tête* encounters where all the torture and other types of physical abuse of detainees take place. When the lawyer (in most cases an *ex officio* one) comes at the end of the 24-hour police detention or the next day, the detainee had already provided incriminating evidence against him/herself. And even where this information by itself does not become part of the formal criminal proceedings when they are opened, the police make sure that it had used it to uncover evidence, which may lawfully enter the criminal file (e.g., even though a confession of a theft during the “exploratory interview” does not become lawful evidence, the stolen items, of which the police found through the confession, does). In such circumstances the detainee usually confirms his/her confession given during the “exploratory interview”. Even

where the lawyer is informed about the ill-treatment, the lawyer usually advises the detainee not to complain as they will not be able to provide evidence and, more importantly, they may undermine their prospects of a favourable outcome of the proceedings. Nowadays, when almost 80% of the criminal proceedings resulting in prison sentences are concluded with plea deals, any confrontation with the police and the prosecution may result in tougher sentences. This is why the accused usually forsake their plans to complain, even in cases of torture.

Another serious structural problem is the lack of prompt access of detainees to an independent doctor to certify their injuries in case of ill-treatment. As shown above, the Bulgarian law does not specify within what period of time after the transfer of the detainee to an institution under the Ministry of Justice the initial medical check should take place. In some cases, it is performed several days and even a week after the transfer. The doctors who perform them are usually employees of the Ministry of Justice. And even where a detainee asks that a doctor certifies the injuries, very often the doctor would tell them that this is pointless as the detainee is not going to be able to prove these allegations and that they may undermine their chances of a better plea deal.

Yet, some detainees complain to the judge of their ill-treatment during police custody at their first appearance before a court, which usually is in the remand hearings to ensure the enforcement of the criminal prosecution. The BHC research did not become aware of a single case where the court referred such a complaint to the prosecution. The judges' disregard of the detainees' complaints was allegedly justified by the fact that prosecutors take part in the remand hearings and thus they also heard the allegations and may take action if they wish. The courts also would not see a reason to declare unlawful the accused's deprivation of liberty due to the unlawful extraction of evidence through ill-treatment.

In December 2020, the Bulgarian parliament adopted an amendment to the Code of Criminal Procedure, which expanded the possibility to conduct remand hearings through videoconference. According to these amendments "[i]n case of a state of emergency, martial law, natural disaster, epidemic, other force majeure circumstances or with the written consent of the accused and his defense counsel, the accused may participate in the hearing by videoconference, in which case his identity shall be verified by the governor of the prison or the governor of the arrest or by an officer designated by them". Such videoconferences were routinely held throughout the first half of 2021. In September 2021, the Constitutional Court declared these amendments unconstitutional in their entirety after it was seized by the

Ombudsman. The Constitutional Court found that the amendments contradict the constitutional provisions providing for the right to liberty and security, as well as those on the access to a lawyer in criminal proceedings.

CONCLUSIONS AND RECOMMENDATIONS

Torture and other ill-treatment, excessive use of force and lack of medical assistance during arrest and in custody, as well as inadequate investigation into those abuses continue to be serious problems of the Bulgarian criminal justice system. Since October 2020 there has been no progress whatsoever at the legislative level or in practice to address it and to implement the necessary measures recommended by the Interim Resolution CM/ResDH(2020)198, adopted by the Committee of Ministers on 1 October 2020 at the 1383rd meeting of the Ministers' Deputies. Therefore, all the recommendations remain valid and should be reiterated at the 1419th meeting. In addition, on the basis of the findings of its research, the BHC recommends to also add several new recommendations, which we believe are crucial in the fight against torture and other ill-treatment:

- The 24-hour police detention should be integrated into the formal criminal procedure. The act of the arrest or the police detention order should amount to opening of pre-trial proceedings, just as in the case of the first emergency investigative actions in the context of searches and seizures under Article 212(2) of the Code of Criminal Procedure.
- The “exploratory interview” and any other evidence-gathering act involving the detainee immediately upon arrest should not take place without the presence of a lawyer, except in compelling circumstances and without prejudice to the fairness of the proceedings (as in *Ibrahim and Others v. the United Kingdom*, no. 50541/08 et al.).
- The law should prohibit the police officers to appoint *ex officio* lawyers for the detainees in police custody on their own choice. This should be the task of the bar councils and the detainee should be able to participate in the choice of his/her lawyer.
- There should be a time limit for medical examination of the detainee, not exceeding 30 hours of his/her initial detention, irrespective of whether he/she had been subsequently released. In case the detainee is released from police custody, he/she should nevertheless have a right to be examined by a doctor free of charge. A protocol for conducting of such a medical examination should be issued by the Ministry of Health and made available to the detainee and his/her lawyer.

- The Code of Criminal Procedure should be supplemented with an obligation of the court to inquire about the detainee's possible ill-treatment in the proceedings under Article 64. In case the court receives credible allegations in that regard, it should refer the case to a prosecutor, different from the one taking part in these proceedings. In case of an appeal against the court's ruling to remand the detainee in custody in such cases, the upper court should follow up on the lower court's referral.
- An amendment should be made in the Code of Criminal Procedure prohibiting the adverse effects of the complaints against ill-treatment by the accused on plea deals.

Krassimir Kanev
Digitally signed
by Krassimir Kanev
Date: 2021.10.19
10:57:45 +03'00'
Krassimir Kanev
Chairperson, BHC