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Meeting: 1318<sup>th</sup> meeting (June 2018) (DH)

Communication from a NGO (Bulgarian Prisoners' Association) (16/03/2018) in the Neshkov and Others case v. Bulgaria (36925/10) (Kehayov group, 41035/98) and reply from the Bulgarian authorities (19/03/2018).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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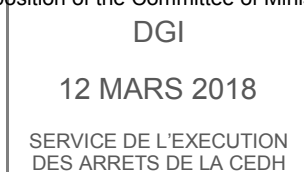
Réunion : 1318<sup>e</sup> réunion (juin 2018) (DH)

Communication d'une ONG (Bulgarian Prisoners' Association) (16/03/2018) dans l'affaire Neshkov et autres c. Bulgarie (36925/10) (groupe Kehayov, 41035/98) et réponse des autorités bulgares (19/03/2018) [**anglais uniquement**]

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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**Bulgarian Prisoners' Association for Rehabilitation  
(BPRA)  
Report – Re Pilot Decision Neshkov and others**

During a meeting on the 26<sup>th</sup> January 2018 with the Vice-Minister of Justice Nikolai Prodanov and a representative of the BPRA and other people concerned with the conditions in Bulgarian prisons, the Vice-Minister explained to the effect that the recommendations and reports from the CPT and Ombudsman of Bulgaria are not important as they are “only recommendations” and not legally binding. Of course then it goes without saying that the person responsible for implementing the reforms is ignoring the recommendations, such reforms will not happen. Not only has the new Ministry of Justice in 2018 refused to implement recommended reforms, but actually there has been a backslide and the current Ministry has undone some of the reforms that occurred from 2014 to the end of 2016.

**1. Measures against overcrowding**

The current Ministry of Justice has refused to share the information relating to capacity and populations of each prison and remand facility with us after we gave a request for the public information. Of course the BPRA is one of the best positioned organisations to check if the official state statistics are correct or not. Bulgarian authorities have been proven to fabricated statistics before, and the statistics provided by the Bulgarian authorities should not be taken as given without the statistics being made public and available to us at the BPRA so we can compare the official statistics with the real amount of prisoners, this is also confirmed by the Bulgarian Helsinki Committee when they said “the official data on the capacity of certain facilities does not correspond to the findings of their experts during visits.” The BPRA is currently appealing the National Prison Authority’s refusal to supply the population and capacity statistics in court but this process can take years, which is the reason for the refusal in the first place, so as when court rules many years can pass and it is someone else’s responsibility in the Ministry and National Prison Authority. However it is absolutely safe to say that the statistics offered by the state are false as they claim that there is no overcrowding in Sofia Prison:

| <i>Prisons and prison hostels</i> | <i>Official capacity<br/>(4 m<sup>2</sup> per person)<br/><br/>(based on the latest<br/>information from<br/>GDIN)</i> | <i>Prison population on 1<br/>December 2017</i> |
|-----------------------------------|--|---|
| <b>Sofia Prison</b>               | <b>total 1,489</b>   | <b>1,166</b>                                    |
| Main Building                     | 670  | 526   |

Despite the state's attempt to hide their statistics from us and the real statistics from observers, the real population of Sofia Prison is always between 700 and 800 prisoners. It is almost a certainty that all the statistics for the closed prisons are purposefully wrong so as to mislead the reviewers.

The legislative reforms that came into force in February 2017 have had a positive effect and it should be noted that those responsible for the legislative reform proposals no longer work in the Ministry of Justice, this is significant because any positive change that has come about has been solely due to the legislative reforms which were against the will of the current Ministry of Justice, the National Prison Authority (Head Directive for the Fulfilment of Punishments) and the respective prison authorities. This is important because there is an overwhelming resistance from the National Prison Authority and the Directors of prisons to implement anything other than the bare minimum that is required of them according to national legislation and often sometimes not even that.

In mid 2017, in order to try and bluff inspectors the Director of Sofia Prison moved non-convicted repeat offenders into the block with non-convicted first time offenders. This freed up a wing in the main body of the prison and the thinking of Sofia Prison administration was that non-convicted prisoners complain less about material conditions as they are concentrating on their trials, however in late 2017, 16 prisoners in the 11<sup>th</sup> group Sofia Prison have submitted complaints to Sofia Administrative Court with regards to poor material conditions and specifically overcrowding. The decision to move the two different categories of prisoners together simply increased overcrowding in the 11<sup>th</sup> group but also it is a major problem to mix first time prisoners and repeat offenders together, for which over 30 complaints were sent to the Ministry of Justice in July 2017, the complaints were ignored by the Ministry. The prison took such measures as there is no legislation preventing first time accused and repeat offender accused from being mixed, although it has always been the practice due to recommendations from all organisations/institutions concerned with good prison practices. So it should be noted that the prison authorities have backpedalled on this previously praised policy of separating repeat accused and first time accused. A major cause for this is the total lack of comprehensive understanding as to the goals and purposes of modern prison management. Also in an attempt to trick Inspectors from the CPT, prisoners were moved temporarily out of their cells as the Inspectors entered Sofia Prison. Although the prison moved prisoners from cell, they didn't have time to move all their beds, so the Inspectors from the CPT were able to see how many prisoners in general were allocated to the cells. Of course as most beds are not permanently connected to the floors, when more prisoners enter the prisons they just add more beds without a capacity limit. The 8<sup>th</sup> group in Sofia Prison remains massively overcrowded as prison staff are not processing prisoners fast enough and unnecessarily keep prisoners there for 2 weeks. There are also cells used for housing prisoners from Kazichene Minimum Security Prison which are always overcrowded. The state should take measures to paint the capacity of a cell on every cell door, so that prisoners are also aware of how many prisoners should be in a cell. Something previously unmentioned is the problem of smoking and overcrowding, despite the prison claiming that they have smoking and non-smoking cells, this is almost never the case exactly due to overcrowding, and smokers are put in cells with non-smokers.

There are many stats that simply can't be true for example in Vratsa minimum security prison "Keramichna Fabrika" there is overcrowding as 6 prisoners are in cells that should only have 4 prisoners, yet the prison is claiming there is no overcrowding problem with regards to the 4m<sup>2</sup> requirement per prisoner. The population statistic offered by the state seems to be roughly correct, so it would appeal that the capacity statistic is not.

| <i>Prisons and prison hostels</i>               | <i>Official capacity<br/>(4 m<sup>2</sup> per person)<br/><br/>(based on the latest<br/>information from<br/>GDIN)</i> | <i>Prison population on 1<br/>December 2017</i> |
|---|--|---|
| <b>Vratsa Prison</b>                            | <b>total 563</b>   | <b>481</b>                                      |
| Main Building                                   | 415  | 354   |
| Open-type prison hostel<br>“Keramichna Fabrika” | 148  | 127   |

### **Alternatives to the punishment deprivation of liberty**

There has been no “wider use... of non-custodial sanctions” and the acquisition of electronic bracelets has been ongoing for maybe over 10 years. Indeed a contract was made and paid for by the government many years ago for the acquisition/rental of electronic bracelets and as far as we know not a single bracelet has ever been used in Bulgaria. There are two main problems (which are systematic throughout the entire Ministry of Justice) with the electronic bracelets so far, the first problem is corruption in that no one knows what happened to all the money that was allocated for electronic bracelets over the last 15 years without anything to show for it. The second problem is that there is still no will within the institutions to widen non-custodial sanctions. Bulgaria now has a new contract for electronic bracelets but this should not be considered progressive as contracts have previously been made and paid without the bracelets ever being used. Due to this there is no reason to expect the current bracelets will be used and this objective should only be considered as ‘advanced’ once the state actually starts using the electronic bracelets and not just keeping them locked in an office, as has been the case for many years.

Although the legislative reforms from early 2017 have allowed prisoners to apply for parole (early release) themselves, the prison Directors have shown incredible resistance to the reforms and are actively sabotaging their effectiveness by systematically writing false reports for prisoners and opposing their parole. Unachieved, impossible goals are cited by the prison Directors as the reasons for why they oppose the early release of prisoners that otherwise actually have fulfilled all the requirements for early release. For example the Director of Kazichene Prison told the entire prison that they wouldn’t give ‘light regime’ to foreigners. Statistically in comparison to Bulgarians there should be at least 20 foreigners on the ‘light regime’ but there are currently no foreigners with ‘light regime’. Despite this the Directors ALSO formally oppose the parole of foreigners in the courts citing that they have failed to reach the goal of ‘light regime’ which the court upheld as the reason for refusing parole. In fact the prison Directors are using now every arbitrary law against prisoners to sabotage the early release reforms. It should also be noted that with few exceptions Directors of prisons have not proposed prisoners for parole and instead the prisoner is forced to apply themselves. In Sliven Women’s Prison, Sofia Prison and Kazichene minimum security prison (attached administratively to Sofia Prison) the Directors have openly threatened prisoners against applying for parole.

Judges too do not seem to be able to understand the law appropriately and have cited unobtainable goals as reasons for refusing parole despite the law stating that prisoners can’t be held responsible for not

fulfilling objectives that are not offered. In a recent development the administration of Sofia Prison has declared that no prisoner can have parole unless they are first on the lowest security level of regime, however at the same time they declared that foreigners wouldn't be allowed this security level, and now judges are refusing to release foreigners. The reduction of early releases and the stopping of early releases for foreigners should be seen as a reversal of the remedies offered by the state. The sabotaging of the parole system is directly connected to the false prison population statistics. If all the prisoners who were eligible for parole were actually given parole then there would be no overcrowding problem and in the case of foreigners who will leave the country after release, the decision of the prison administration and courts to refuse to release eligible prisoners is a clear sign that the state does not want to reduce overcrowding.

### **Measures against poor material conditions**

Despite the state admitting that 17 out of 32 remand prisons "investigative detention facilities" do not offer adequate conditions, there is no information that the state will close or renovate them. Remand prisons such as Vidin still don't even have toilets or running water in the cells, our information is from April 2017. Generally speaking the Bulgarian authorities have really only taken action where facilities have been highlighted by European institutions as needing renovations and as such the renovations that have occurred were to appease inspectors rather than systematically bringing the entire Bulgarian penitentiary system up to ECHR and CPT standards. Even when remand prisons have been renovated such as Ruse Remand Prison, bad prison management continue to be a problem as prisoners are made to sleep on the floors without beds. It should also be of interest that no prisons or remand prisons have a mechanism to deal with overpopulation. When the police bring someone to be detained there is no mechanism for the remand prison to refuse to accept someone due to overcrowding and as such prison staff simply force more people into small cells where they have to sleep together on small mattresses. There is also no mechanism for Bulgarian courts to order suspects to be detained where they know there is room for them. The other general problems of course still occur even with renovations such as poor bedding often infested with bed bugs, rats and cockroaches, often total lack of access to natural light and little to no access to a place of exercise or recreational facilities. The idea to move remand prisoners out of remand prisons to prisons and thus offering them "more activities" is only marginally true, if ever implemented (there is no evidence or reason to believe this ever will be implemented). Remand prisoners in prisons are almost always prevented as routine, from working or participating in the already limited activities and work activities despite the law stating that remand prisoners should have access to work and activities. Sofia Prison for example doesn't have a single remand prisoner working except for one who delivers the food to the group for remand prisoners.

Many places of detention still do not offer even the most basic of conditions as required by the CPT or the Pilot Decision – Neshkov. Vratsa minimum security prison "Keramichna Fabrika" for example still does not offer drinking water or access to a toilet in the cells and during the nights prisoners are still forced to use buckets. Furthermore there is only one source of drinking water, a single tap where all 120 prisoners are forced to use for all their water needs, including washing clothes by hand, washing dishes, brushing teeth and drinking water. Of course the irony is that the state is boasting about reducing overcrowding by moving prisoners to minimum security prisons, but many of the minimum security prisons have worse material conditions than their connected maximum security prisons, such as the case in Vratsa.

### **Setting up the new prison hostels in Debelt**

One of the ironies of the Debelt Prison is that despite it being a newly built prison, it was not built with the European Prison Rules in mind that specifically recommend that each prisoner should have his/her own cell. Instead the new prison was built to old standards and again prisoners are forced into sharing cells with other prisoners.

### **Measures aimed at more adequate health care in detention facilities**

A major problem with health care in Bulgarian prisons is the systematic corruption that is seen across all Bulgarian state institutions. An easy example is the mass and systematic embezzlement of medicines that are then sold on the “black market” outside of prison. The Doctors and staff who work with medicines and prisoners fake patients to issue medicines which are then sold outside of prison. There was a major problem in 2016 when 2 prisoners needed medication for HIV but the prison refused to supply it to them and continually lied to the prisoners telling them that they were healthy and fine. It wasn't until the Bulgarian Helsinki Committee and the Bulgarian Prisoners Association intervened that the prison staff were afraid enough to give the prisoners their needed medicines. Without transparency for budgets and spending the largest problem to health care in Bulgarian prisons, that of corruption, will continue unabated. In this regard the state has taken absolutely no progressive or constructive steps. Corruption affecting health care in detention facilities and prisons doesn't appear anywhere in any reports or action plans by the state and that is due to of course those who write said reports having an invested interest in covering up this aspect of the problem, but also because the state refuses to include our organisation (Bulgarian Prisoners' Association) in the work groups so as to know where some of the major causes of problems are. The “national strategy on the provision of health care in prisons” is totally inadequate as the state has refused to include or even speak with on this subject. The so called “training” that was provided to medical and non medical staff in detention facilities “on provisions of health care and medical ethics” have had absolutely no effect. Generally so called “training” is just a way to embezzle funds, especially as funds could be used more constructively for the real problems, for example having a digital data base and tracking system for medications and prisoners.

### **Compensatory and preventive remedies**

The conclusions that “the introduction of the new remedies has gone hand in hand with the general improvement of the conditions in the prison system.” Is at best vague, as there isn't a connection between the preventive remedies through court action and the “general improvement of the conditions in the prison system” although the laws allowing ‘preventive remedies’ is in theory good, it is currently inaccessible for prisoners who are illiterate and/or who don't have access to a lawyer to represent them. The law too even over 6 months later is very unknown to lawyers or prisoners. The information and legal aid contacts should be made available to all prisoners, especially in the remand prisons so that prisoners know that they have this legal right.

With regards to compensatory measures, there has been an improvement, but it doesn't go far enough. Most prisoners who are incarcerated during the time of seeking compensation would only be satisfied with a reduction of their sentence as is the case in other EU/COE states, but Bulgaria refused to allow reduction of sentence to be a form of compensation for bad material conditions. Not only would this help reduce overcrowding but it would also reduce the time when prisoners were kept in inhumane conditions and thus reduce the amount of compensation needed for the overall incarceration of prisoners. Unfortunately the state has found another way to subvert the compensatory mechanism, for example with the case of Todor Marinov Todorov case number 2999/02.05.2017 from Sofia Administrative Court, Mr. Todorov was awarded only 500€ for almost a year incarcerated in inhumane conditions where he was forced to share a cell in Ruse Remand Prison with 4 other men with only 2 beds, no toilet or water and a bucket in the cell to use for a toilet. Clearly the laws do not sufficiently provide for adequate compensation. If the appeal court does not increase the amount of compensation Mr. Todorov will be forced to appeal to the ECHR.

### **INDIVIDUAL MEASURES**

It is a good idea to NOT close the supervision of the execution as regards the individual measures taken for Halil Adem Hasan, Radev, Dimitrov, Ribov and Iordan Petrov as the measures claimed by the state have not been confirmed by the applicants and their representatives. The state should also provide the exact information as to what the “common activities with other inmates” consists of, for example if they

have access to every communal activity or for example work. The information provided by the state is far too vague and non-descript. Ribov during summer 2017 is back on special regime conditions and it would appear that the state's reply is again factually incorrect.

### **General comments**

It should also be noted that many prisoners who have been somehow mentioned with connection to the Pilot Decision – Neshkov have been threatened, harassed and punished by the prison authorities. After inspectors from the Bulgarian Helsinki Committee (BHC) came to Kremakovski Prison to inspect the conditions there in connection with a prisoner extradited from the UK, the prisoner was blamed for the inspection and harassed by the staff. Even though he didn't request the inspections he was nevertheless branded a trouble maker. The exact same thing happened when BHC inspectors came to visit Vratsa minimum security prison "Keramichna Fabrika". After the visit the prisoner was harassed and threatened by the prison authorities and in his words "they blackened my life after the visit". Still, too often the work of the prison authorities and the Ministry of Justice is angled at hiding information from the ECHR and not remedying the problems as cited by the ECHR.

Regards  
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## Response of the Bulgarian Government to the communication of the Bulgarian Prisoners' Association for Rehabilitation (BPAR) of 12 March 2018

19 March 2018



In relation to the above communication, the Bulgarian Government would like to briefly address the raised grievances.

### I. Measures against overcrowding and poor conditions of detention

#### 1. *As regards the alleged overcrowding in Sofia Prison, in particular, the overcrowding in the 8<sup>th</sup> and 11<sup>th</sup> group.*

On 14 March 2018 in 8<sup>th</sup> group (the group of prisoners who are initially entering the prison) consisted of 82 prisoners whereas the capacity of the group is 70 prisoners. The overcrowding is temporary and sporadic as this is the group where the newly arriving prisoners are accommodated. In line with the domestic law their stay in this group could be up to one month. In order to overcome this temporary overcrowding a schedule has been set up to further allocate the prisoners.

On 26 June 2017, following analysis of the situation in Sofia Prison and in view of optimizing the allocation of prisoners and avoiding overcrowding, the detainees on remand were transferred from the 5<sup>th</sup> to the 11<sup>th</sup> group. This move led to relieving the overcrowding and the pressure on the social workers who are in charge of the prisoners. As of 14 March 2018, there is no overcrowding in 11<sup>th</sup> group as there are 89 prisoners allocated there, whereas the capacity is 90 prisoners.

#### 2. *As regards the open-type prison hostel "Keramichna fabrika" at Vratsa Prison.*

It is true that at present the cells in the hostel do not dispose of in-cell toilets.

During the day, all inmates have free and unlimited access to the sanitary facilities. The hygiene in the common areas is kept at a very good level. The prisoners are provided with hygienic materials every month. During the winter the premises are kept warm and there is hot water every day for a period of one hour. Apart from that, the working prisoners are provided with more time for washing with warm water. All sleeping premises have windows and good ventilation. There are nine sinks in the common washing premises.

The prison administration admits that at present the conditions in the hostel do not comply with the standards. However, a building has been acquired by the General Directorate for the Execution of Punishments and it will be turned into a prison hostel with resources under the Norwegian Financial Mechanism in the near future.



## II. Alternatives to the deprivation of liberty

### 1. *As regards the alleged failure of the project on electronic monitoring.*

Following the necessary procurement procedure, an agreement with a subcontractor has been concluded in the beginning of 2018. It is expected that the electronic monitoring will be applied as of September 2018 and will include up to 250 individuals.

### 2. *As regards the alleged hostile attitude towards foreign prisoners.*

Following the legislative amendments of February 2017, the prison regime has been amended for 21 foreign prisoners, accommodated in Sofia Prison. For 19 of them, the regime was amended from strict to general, and for 2 of them – from general to light. As regards the early conditional release, for 2017 the Sofia City Court heard 48 applications for early conditional release of foreign prisoners and 28 of them have been upheld. For 2018 (up until 14 March 2018), 5 applications of foreign prisoners have been submitted to the court for early conditional release.

It should also be underlined that with the abovementioned legislative amendments of February 2017, the prisoner can directly approach the court with a request for an early conditional release.

In 2017, 14 foreign prisoners were rewarded with visits with close relatives for up to 12 hours outside the prison; 1 prisoner was awarded vacation time for up to two days and 8 prisoners were awarded with vacation time for up to five days. In 2018, 1 foreign prisoner was awarded with visits with close relatives for up to two days, and 3 prisoners were awarded with vacation time for up to two days.

In respect of the foreign female prisoners, accommodated in Sliven Prison, at present they are 8. Of them, 4 prisoners are accommodated in an open type prison hostel and 4 prisoners are accommodated in a close type prison hostel. Of all foreign prisoners, only 1 has acquired the right to request the court for an early conditional release, that is on 9 February 2018.

Based on the above, it can be concluded that there is no different treatment to foreign prisoners and the legislative rules are applied in a fair manner.

## III. Conditions in Investigative Detention Facilities

At present, the number of IDFs is 32, of which 6 have been transferred to prisons. The IDFs in Shumen, Burgas, Pleven, Vratsa, Lovech and Pazardzhik have been refurbished. Refurbishments are currently ongoing in Stara Zagora IDF. It is planned that in 2018 the IDFs in Sliven, Veliko Turnovo, Petrich, Dobrich, Blagoevgrad and Kurdjali will be refurbished or completely rebuilt.

The average stay in an IDF is 27 days.

The IDF in Vidin has 10 cells and the capacity for 23 detainees. It does not dispose of toilets in each cell. There are common toilets in the IDF, which are accessible day and night.

The IDF in Russe has 42 cells. There have been refurbishments in 31 of them and they have in-cell toilets. There are 67 beds in the cells, which dispose of sanitary facilities and 22 beds in the remaining cells. However, in 2017 and until 14 March 2018 the number of the detainees held in the IDF did not go above 58 and all of them were accommodated in the cells with toilets.

IV. In respect of the newly introduced preventive and compensatory remedies.

The social and rehabilitation workers in prisons have acquainted the prisoners with the new legislative amendments introduced in chapters sixth and seventh of the Execution of Punishments and Pre-Trial Detention Act (the procedures which represent compensatory and preventive remedies).