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REPORT  
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COMMISSIONER FOR HUMAN RIGHTS OF THE  
COUNCIL OF EUROPE  
FOLLOWING HIS VISIT TO BULGARIA  
FROM 9 TO 11 FEBRUARY 2015



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## SUMMARY

Commissioner Nils Muižnieks and his delegation visited Bulgaria from 9 to 11 February 2015. In the course of the visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. The present report focuses on the following human rights issues:

### Human rights of persons living in institutions

The process of deinstitutionalisation is underway in Bulgaria for both children and persons with disabilities. However, further efforts and, in some areas, important changes are required to ensure that long-stay residential institutions are replaced with family and community-based services which respect the rights, dignity and wishes of each individual.

While the deinstitutionalisation process for children living in social and medical care institutions has already yielded positive results, the Commissioner calls on the Bulgarian authorities to address a number of concerns including a risk of re-institutionalisation of children in smaller residential settings, the continuing placement of children in those institutions which have not yet been closed down, the overrepresentation of Roma children, poor children and children with disabilities in these institutions and, more generally, a persisting resistance to the deinstitutionalisation process. Efforts towards supporting the families and preventing their separation should also be stepped up.

As concerns institutions for the protection of children victims of abuse or at risk of becoming victims of abuse, while the state is obliged to provide alternatives to parental care in case of abuse perpetrated by the parents, greater emphasis should be placed on family-type settings such as foster care, rather than on placements in institutions for child protection. The Commissioner urges the authorities to develop a fully-fledged system of community-based services and alternative care for all children in need.

The situation of children placed in institutions for juvenile delinquency created in the 1950s to deal with children's "anti-social behaviour" is of serious concern. Vulnerable children continue to be sent to these institutions with no medical care adapted to their specific needs. There are serious shortcomings in guaranteeing the right to education for children sent to correctional boarding schools and socio-pedagogical boarding schools. The Commissioner urges the authorities to stop placing children in those juvenile delinquency institutions and to continue with the rapid phasing out of all these institutions. A more general reform of the juvenile justice system that would also cover the human rights of children placed in correctional homes for having committed criminal law offences should be adopted.

The Commissioner is concerned at reports indicating that human rights violations frequently occur in all of the types of institutional settings referred to above. They include physical and psychological violence perpetrated among children living in institutional care and also by staff members against these children. The Bulgarian authorities should ensure that full and effective investigations into allegations of ill-treatment of children are carried out and that the perpetrators are brought to justice. Shortcomings in access to mainstream education for children with disabilities living in, or coming from institutions require the urgent attention of the authorities.

While Bulgaria has committed to enabling adults with disabilities to move out of institutions and live within the community, the deinstitutionalisation process for these persons started only recently, and progress is very slow. In some cases persons have been transferred to new residential institutions which, although smaller, do not meet the standards for independent living in the community. While the number of community-based services is reportedly growing, it remains seriously inadequate.

One of the main obstacles to the deinstitutionalisation of adults with intellectual and psycho-social disabilities is the legal capacity regime currently in place, which often leads to the placement of persons under full or partial guardianship in institutions. Persons with disabilities should be able to access the necessary support to make decisions about where and with whom to live or what community services to use. The Commissioner notes the commitment of the Bulgarian authorities to implementing this shift from substituted to supported decision-making and urges the Bulgarian authorities to move forward with modifying the legislation accordingly.

## Human rights of immigrants, asylum seekers and refugees

At the crossroads of migratory movements along the South-Eastern border of the European Union, Bulgaria has experienced a considerable increase in arrivals of migrants and asylum applications since mid-2013. The reception conditions and asylum procedures in place at that time turned out to be totally inadequate to absorb this sudden influx. Since then, the living conditions of asylum seekers in reception centres have improved. However, the progress achieved is fragile and the sustainability of the public funds for covering the costs of basic assistance for asylum seekers is a matter of concern.

Following the introduction of measures at the end of 2013 to prevent irregular entry at the Bulgarian-Turkish border, including the deployment of additional personnel for border control, the building of a 33 km fence and its extension which is currently underway, the number of migrants arriving has declined. The Commissioner is seriously concerned at consistent reports of push-backs of migrants, in some cases accompanied by excessive use of force, carried out by the Bulgarian law enforcement authorities at the Bulgarian-Turkish border. He urges the Bulgarian authorities to strictly abide by their obligations to respect the right of every person to seek and enjoy asylum and to refrain from summary returns and collective expulsions of persons arriving at the border. All allegations of push-backs and ill-treatment by officials should be fully and effectively investigated.

As regards the asylum procedure, the Commissioner calls on the Bulgarian authorities to address current shortcomings in the system for the early identification, assessment and referral of vulnerable asylum-seekers with specific needs, including unaccompanied children, and the lack of specific support for these persons. Another area of concern is the fact that free legal aid is not yet guaranteed in practice at all stages of the asylum procedure.

The Commissioner calls on the Bulgarian authorities to ensure that any use of detention for asylum seekers strictly complies with international standards. The current situation whereby asylum seekers are subject to administrative detention until their asylum claim is formally registered is a matter of concern, especially as registration can take a considerable amount of time. The Commissioner is concerned at the inadequate material conditions in administrative detention centres and at the numerous reports of ill-treatment in these centres. As regards detention for deportation, one of the main concerns is that the law allows for the detention of children accompanied by their families for a period of up to three months. Worryingly, a draft law for amending the Law on Asylum and Refugees envisages detention of asylum seekers in closed-type centres as a rule, with accommodation in open reception centres becoming the exception. The Commissioner calls upon the Bulgarian authorities to ensure that, in law and in practice, the detention of asylum seekers is only used as a last resort, for the shortest possible period of time and on the basis of individual assessments. Children should not be subjected to immigration detention, whether with or without their families.

The Commissioner is concerned that the system to support the integration of refugees and other beneficiaries of international protection in Bulgarian society still suffers from serious deficiencies, mainly connected with insufficient funding. As a result, refugees and other beneficiaries of international protection face serious integration challenges which threaten their enjoyment of social and economic rights, including a serious risk of becoming homeless, high levels of unemployment, no effective access to education, problems in accessing health care services, and vulnerability to hate crimes. The Bulgarian authorities should step up their integration efforts by allocating adequate financial and human resources.

## Media freedom

Despite existing legal guarantees, media freedom in Bulgaria is currently impeded or threatened by a combination of practices which, taken together, create an environment conducive to widespread self-censorship among journalists and undue external pressure on media.

Recalling that media pluralism is the institutional guarantee for the fulfilment of the right to receive and impart information, the Commissioner calls on the Bulgarian authorities to take action to secure it. In this connection, the lack of transparency on media ownership and financing combined with a strong media concentration is of particular concern. Media being more than just a market, the authorities should consider establishing independent monitoring of media ownership and financing, as well as rules aimed at limiting excessive concentration of media ownership and favouring media pluralism.

Only a small number of Bulgarian media outlets are regarded as free from political and economic influence. Public authorities are reported to exert influence on the editorial content of media to their advantage, using their powers to distribute advertisement and information contract revenues, including funds for communicating on EU-funded projects. The system of financing public broadcasters has the potential of keeping them politically dependent. Another issue of concern is the persisting use of hidden paid political advertisement in the media, coupled with minimal amounts of genuine editorial coverage of political campaigns. The Bulgarian authorities should take action to address the lack of independence of media outlets, including by distributing revenues from public advertisement and information contracts to private media outlets in a transparent and non-discriminatory way.

The Commissioner is concerned at numerous alerts regarding sanctions imposed on media and other actions targeting them in relation to their reporting on the banking and financial sectors, including high fines imposed in January 2015 on several media outlets by the Financial Supervision Commission (FSC) following the banking crisis of June 2014. These practices need to be addressed in an urgent manner by the Bulgarian authorities as they are conducive to self-censorship by the media on a subject of clear public interest to Bulgarian citizens. Noting allegations of several attempts to force media outlets to reveal their sources, including by the FSC in the context of the above-mentioned procedures on market manipulation, the Commissioner considers that there is a need to review current legislation and practice so as to reinforce the protection of journalistic sources.

Attacks on journalists' properties and threats against investigative journalists have continued while the reaction of the authorities is reported to be insufficient to protect journalists effectively. The Commissioner calls on the Bulgarian authorities to do their utmost to protect journalists from physical and other forms of violence. There is still a need to deal with defamation in a fully proportionate manner, as public figures keep bringing journalists before courts asking for disproportionate damages. Also, while imprisonment is no longer foreseen by law, defamation is not yet fully decriminalised. Lastly, in view of the shortcomings in self-regulation and other limits in the regulation by the Council for Electronic Media (CEM), the Bulgarian authorities should engage in a dialogue with media professionals and civil society on how best to guarantee the efficiency of media self-regulation and regulation by the CEM.

The report contains the Commissioner's conclusions and recommendations addressed to the Bulgarian authorities and is published on the Commissioner's website along with the authorities' comments.

## INTRODUCTION

1. The present report follows a visit to Bulgaria by the Council of Europe Commissioner for Human Rights (“the Commissioner”) from 9 to 11 February 2015.<sup>1</sup> The visit focused on the human rights of persons in institutions, the human rights of immigrants, asylum seekers and refugees, and media freedom.
2. During his visit the Commissioner held discussions with the Bulgarian authorities, including the Deputy Prime Minister and Minister of Labour and Social Policy, Mr Ivaylo Kalfin; the Minister of Foreign Affairs, Mr Daniel Mitov; the Minister of Interior, Mr Veselin Vuchkov; the Minister of Justice, Mr Hristo Ivanov; the Minister of Education and Science, Mr Todor Tanev; the Prosecutor General, Mr Sotir Tsatsarov; the President of the State Agency for Child Protection, Ms Eva Jecheva; and the President of the State Agency for Refugees, Mr Nikola Kazakov; The Commissioner also met with the Chairperson of the Bulgarian Delegation to PACE, Ms Djema Grozdanova; the Chairman of the Council for Electronic Media, Mr Georgi Lazanov; and the Ombudsman of Bulgaria, Mr Konstantin Penchev.
3. In addition, the Commissioner met with representatives of a number of international and non-governmental organisations. He also visited the correctional boarding school for girls in Podem and the reception centre for asylum seekers in the Voenna Rampa neighbourhood of Sofia.
4. The Commissioner wishes to thank sincerely the Bulgarian authorities in Strasbourg and in Sofia for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. The Commissioner notes that the protection of human rights in Bulgaria, including in the areas covered by this report, has been negatively impacted by a number of factors: since February 2013, Bulgaria underwent a period of political instability punctuated with public protests. The financial and economic crisis and ensuing austerity measures also had a significant impact on Bulgarians. Corruption, which remains a serious issue in Bulgaria, and poor administration of justice, which makes access to justice for all persons a general issue of concern, negatively affect the protection of human rights in most areas. The absence of an adequate response of the authorities to long-standing serious concerns on police ill-treatment and prison overcrowding<sup>2</sup> are further relevant factors, as is the continuing discrimination and social exclusion affecting many members of Bulgaria’s Roma population.
6. These developments have provided the background to the three issues covered in this report: the human rights of persons in institutions (section I); the human rights of immigrants, asylum seekers and refugees (section II); and media freedom (section III). Each section of the report contains the Commissioner’s conclusions and recommendations addressed to the Bulgarian authorities. The Commissioner wishes to continue his constructive dialogue with the authorities on these issues. He trusts that this dialogue will be facilitated by the present report.

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<sup>1</sup> During his visit the Commissioner was accompanied by Mr Giancarlo Cardinale, Deputy to the Director of his Office, and by Ms Claudia Lam, Adviser.

<sup>2</sup> See the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [Public Statement](#) issued on 26 March 2015. On prison overcrowding, see also the European Court of Human Rights pilot judgment of 27 January 2015 (not-final) *Neshkov and others v. Bulgaria*, Applications Nos. [36925/10](#), 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, on inhuman and degrading detention conditions and the related lack of effective remedies in Bulgaria. In this judgment, which is not final due to a pending request for referral to the Grand Chamber, the court considered that there had been a violation of Article 3 and 13 of the ECHR, notably on account of overcrowding and lack of privacy and personal dignity.

## 1 HUMAN RIGHTS OF PERSONS LIVING IN INSTITUTIONS

7. While institutions were once seen in Bulgaria as the best way of caring for vulnerable children, children at risk and adults with a variety of support needs, deinstitutionalisation is now underway both for children and for adults with disabilities. However, further efforts and, in some areas, important changes are required to ensure that long-stay residential institutions are replaced with family and community-based services respecting the rights, the dignity, needs and wishes of each individual.

### 1.1 HUMAN RIGHTS OF CHILDREN LIVING IN INSTITUTIONAL CARE

8. The Commissioner's predecessor expressed serious concerns at the situation of children living in institutions in Bulgaria<sup>3</sup>. While the overall number of children living in institutions has steadily declined in recent years, the Commissioner decided to follow-up on his predecessor's findings, in view of outstanding human rights concerns in particular for those children who remain in institutions.
9. As stated in the preamble of the United Nations Convention on the Rights of the Child (CRC), for the full and harmonious development of his or her personality, the child should grow up in a family environment. In Bulgaria children can be separated from their families and placed in institutions either for social and medical care, including for children with disabilities, or institutions for child protection.

#### 1.1.1 INSTITUTIONS FOR SOCIAL AND MEDICAL CARE

10. Different types of residential institutions for social and medical care of children exist in Bulgaria, most of them under the 1998 Law on Social Assistance and corresponding regulations. They include infant homes<sup>4</sup>, children's homes<sup>5</sup> and homes for children with psycho-social or physical disabilities.<sup>6</sup>
11. Until recently, Bulgaria made very extensive use of institutional care for children deprived of parental care and/or with disabilities. In 2003, a comparative study showed that there were approximately 50 per 10,000 children under the age of three in institutional care in Bulgaria, against an average of 11 per 10,000 in the 33 countries studied.<sup>7</sup> It is important to note that, according to estimates, in Bulgaria over 90% of children placed in long-term institutions have living parents and cannot therefore be considered as "orphans".
12. Since the deinstitutionalisation process started in Bulgaria in the 2000s, the number of children living in institutions has decreased significantly from 12,609 in 2001 to 2,613 in 2014 across all types of social and medical care institutions. The decrease was particularly important for the number of children placed in children's homes, while the number of children placed in institutions for children with disabilities decreased less rapidly during the same period. A significant number of institutions were closed down, including institutions for children with disabilities, such as the infamous Mogilino institution in 2009.<sup>8</sup>
13. The deinstitutionalisation process accelerated with the launching in February 2010 of the National Strategy "Vision of Deinstitutionalisation of Children in Bulgaria". Its objectives include the closing down of 137 institutions by February 2025 and a ban on residential care for 0-3 year olds beyond 2025. Children with psycho-social and intellectual disabilities were chosen as a priority group to be transferred from institutions to live and receive services in the community. The National Strategy is accompanied by an Action Plan for 2010-2015, the setting-up of a consultative expert group and an inter-ministerial

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<sup>3</sup> [Letter](#) from the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, to Mr Nickolay Mladenov, Minister for Foreign Affairs of Bulgaria, CommDH(2012)12, 22 February 2012. See also the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria from 3 to 5 November 2009, [CommDH\(2010\)1](#), 9 February 2010.

<sup>4</sup> Homes for the medical and social care of children.

<sup>5</sup> Homes for children deprived of parental care, providing services to children without disabilities aged 4-17.

<sup>6</sup> Homes providing services to children and young people with disabilities aged 4-17 years.

<sup>7</sup> See Browne, K. et al., Mapping the Number and Characteristics of Children under Three in Institutions across Europe at Risk of Harm. European Union Daphne Programme. Final Project Report No. 2002/017/C, Publication 26951, 2004.

<sup>8</sup> See below, footnote 13.

working group for implementing the Action Plan. The leading Ministry is the Ministry for Labour and Social Policy. NGOs have played an instrumental role in the deinstitutionalisation process and have created a Coalition (Childhood 2025) to further support it.

14. The Commissioner notes that the deinstitutionalisation process has already yielded positive results. An independent evaluation<sup>9</sup> of the first stage of implementing the National Strategy (2010-2014) found a number of positive outcomes, including genuine political will and commitment towards deinstitutionalisation of children, an acceleration in the reduction of the number of children in institutional care and an increase in the number of children entering family-based or family-type care. The good co-operation between NGOs and the government in implementing the Strategy was also considered to be an asset. The “Childhood 2025” Coalition recorded improvements in the prevention of institutionalisation of children, the number of children reintegrated in their families or placed with extended families and in the development of mechanisms for managing and co-ordinating the process at national level.
15. However a number of concerns highlighted by child rights’ experts still have to be addressed by the Bulgarian authorities. In particular, the initial priority on deinstitutionalisation of children with disabilities has diminished to give way to an increased focus on children deprived of parental care, with a risk that children with disabilities are left behind in the process. Municipalities’ resistance to deinstitutionalisation and delays due to bureaucracy are also obstacles slowing down the deinstitutionalisation process. In addition, there is still not enough co-ordination both among ministries and with local actors. NGOs also consider that they have been increasingly excluded from the discussions at governmental level and have called for an intensification of the dialogue with the authorities.
16. While there is an increased public understanding and support for the deinstitutionalisation process and reform, one of the main obstacles is linked to the strong belief among persons working with children and also some parents and members of society at large that institutions constitute the best solution to addressing children’s needs. It may be useful to recall here that research shows the damaging effects of institutionalisation on children. Contemporary evidence suggests that children under the age of three are particularly vulnerable and that infants who are institutionalised before the age of six months suffer long-term developmental delays. Institutional care contributes to creating generations of young people who are not able to fully integrate into society. Even well-run and well-equipped institutions will always be emotionally damaging to children. Generally, children leaving institutional care are more likely to be dependent on the state and other service providers for their own well-being and survival.<sup>10</sup>
17. The Commissioner expresses particular concern at allegations that the socio-economic background, the ethnic origin and/or the disability of the child are sometimes part of the reasoning in the decision to separate a child from his/her parents and place him/her in a social or medical care institution.
18. In Bulgaria, like in many other countries, evidence shows that the primary reason for admission to institutions is poverty.<sup>11</sup> The Commissioner is also seriously concerned that Roma children are much more vulnerable to separation from their parents and ensuing institutionalisation than other children. For instance, it was reported that single Roma adult mothers or Roma girls who give birth before the age of 16 may be targeted for child removal by child protection departments. In all institutions, Roma are overrepresented, reportedly constituting over 50% in general and in some cases close to 100% of their populations. Well-documented discrimination against Roma in all fields of life<sup>12</sup> is among the numerous factors leading to placement of Roma children in institutions. Concerning more particularly the

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<sup>9</sup> UNICEF, Deinstitutionalisation of Children in Bulgaria - How Far and Where to? Independent [Review](#) of Progress and Challenges.

<sup>10</sup> See UN Office of the High Commissioner for Human Rights, Europe Regional Office, The Rights of Vulnerable Children under the Age of Three, [Report](#). See also the series of papers recently published by [Eurochild](#) on the subject of alternative care for children deconstructing myths on institutionalisation.

<sup>11</sup> See also the Parliamentary Assembly of the Council of Europe, [Resolution](#) 2049 (2015) on social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States, 22 April 2015.

<sup>12</sup> ECRI, [Report](#) on Bulgaria, (fifth monitoring cycle), 16 September 2014. Advisory Committee on the Framework Convention for the Protection of National Minorities, Third [Opinion](#) on Bulgaria, adopted on 11 February 2014, ACFC/OP/III(2014)001.

placement of children on the basis of their disabilities, there are still cases where medical staff have pushed parents to abandon their children born with disabilities and place them in a specialised institution under the pretext that this would be the only viable solution.

19. Preventing the separation of children from their parents and their placement in institutions therefore requires holistic measures to combat all forms of discrimination in Bulgaria and in particular discrimination on the grounds of socio-economic status, ethnic origin and disability. This also requires addressing poverty in general and child poverty in particular. Prevention of institutionalisation also implies other measures, and first and foremost a better protection of the human rights of children. In this respect, legislative reforms in the field of education, child protection and juvenile justice, instrumental to preventing institutionalisation, have unfortunately been delayed. Another problem is that the funds saved by closing institutions are not used to support the financial sustainability of the system of family and community-based services, but are lost in the general state budget. There is also a lack of harmonised standards of social work with children and of well-trained, motivated social workers who could deal with children throughout the country. Currently, according to expert NGOs, there are places where each social worker deals with approximately 100 cases.
20. The risk of re-institutionalisation of children is also an issue of concern. In this connection, the Commissioner notes that the project "Childhood for all", which is run by the State Agency for Child Protection, targets 1,800 children and young people with the aim of ensuring their long-term placement in "family-type placement centres". The plan is to build 149 family-type accommodation centres and 36 protected homes in the territory of 81 municipalities. The new family-type placement centres were intended to accommodate up to 12 children (plus two in emergency situations) for a transitional period. Unfortunately, these centres are reported to become settings for permanent living, thereby turning into new, even if smaller, institutions. For instance, children removed from the now closed Mogilino home have been placed in such centres and a recent study concluded that, although their living conditions have considerably improved, they are still living in institution-like settings and in isolation from the community.<sup>13</sup> Reportedly, the staff working there were not sufficiently prepared for this new form of care. The standards and the monitoring are not sufficient to ensure that the rights of children are fulfilled. The National Ombudsman even concluded in May 2014 that in some of these family-type institutions, the health and lives of children were threatened and that there had been cases of abuse by young adults against children.
21. More generally, the Commissioner was informed by children's rights' specialists that all current deinstitutionalisation efforts could be jeopardised unless an overall paradigm shift is effected in Bulgarian society towards seeing children as rights-bearers and not as passive objects of care. Worryingly, the latter way of thinking was regarded by child rights' specialists as gaining ground in Bulgaria in recent years.

### 1.1.2 INSTITUTIONS FOR CHILD PROTECTION

22. The 2000 Law on Child Protection provides for a number of institutions aimed at temporarily accommodating children in need of protection because they have been or are at risk of becoming victims of abuse. This constitutes a form of alternative care (to be understood as alternative to parental care). At the outset, the Commissioner notes that the CRC recognises that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.<sup>14</sup> However, the CRC also stresses that "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State" (Article 20). According to the 2010 UN Guidelines on Alternative Care aimed at implementing the CRC, such solutions should preferably take the form of family-based or family-like settings. The use of residential care should be limited to cases where such a setting is specifically

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<sup>13</sup> UNICEF Bulgaria, Assessment of the Closure of DDMUI – Mogilino, [Report](#), February 2014.

<sup>14</sup> CRC's Preamble, see also Articles 7 (right to know and be cared for by his or her parents), 9 (a child shall not be separated from his or her parents against their will), 18 (parents' common responsibilities for the upbringing and development of the child), 19 (protection of child against all forms of abuse).

appropriate, necessary and constructive for the individual child concerned and in his/her best interests. Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration.<sup>15</sup>

23. Under Bulgarian law, a child at risk (i.e. a child left without parental care; a victim of abuse, violence, exploitation or other inhuman or degrading treatment or punishment inside or outside their family; a child in danger of having his physical, mental, moral, intellectual and social development damaged; a child suffering from disability or a hard to cure disease confirmed by a specialist; or a child facing the risk of dropping out of school or who has already dropped out of school) can be placed in temporary residential accommodation. These facilities include: family-type placement centres;<sup>16</sup> centres for temporary placement for homeless children for up to three months; crisis centres for victims of violence, trafficking and exploitation for up to six months; and shelters for children aimed at meeting their most pressing needs for a maximum period of three months. All these institutions are of the closed type, the child not being entitled to leave them. For instance, in the case *A. and others v. Bulgaria*, the Court found that placing a child in a crisis centre amounted to a deprivation of the child's liberty under Article 5 of the ECHR.<sup>17</sup>
24. The Law on Child Protection requires that the decision on placement in institutions for the protection of the child is taken by a judge and as a last resort. However, a recent NGO study has stressed that the practice was not in line with the law, the ECHR and the CRC in terms of the right to respect for private and family life, deprivation of liberty and placement in formal care.<sup>18</sup> The requirements that the placements must be decided by a judge and last for a defined maximum period of time (depending on the type of setting) are not always respected. For instance, the NGO study identified, for the year 2013, 11 placements based only on a prosecutor's decision and two cases of children placed by decision of the management of the shelter. Another issue of concern is that there is no automatic periodic judicial review of the placement decision. As for the duration of placement, the Commissioner notes that in some cases children were placed for periods of five years, or for a period longer than the maximum provided for in the law. There are also allegations of placements for unlimited periods of time.
25. An issue of serious concern relates to the lack of family-based or family-type alternatives to parental care, meaning that the only possible solution open to the authority placing a child currently is an institutional setting. The authorities are conscious of the need to develop alternative care solutions that are in line with the CRC requirements and have taken steps in this respect. They have significantly increased the number of foster families but foster care services still need to be improved.

### 1.1.3 PERSISTING HUMAN RIGHTS VIOLATIONS IN INSTITUTIONAL CARE

26. The Commissioner is concerned at concurring reports indicating that human rights violations frequently occur on a daily basis in all types of institutional settings referred to above. Following the infamous case of deaths of children due to neglect in the 1990s that was brought to the European Court of Human Rights<sup>19</sup> (the Court), there have been more recent reports of serious human rights violations against children living in institutions for children with psycho-social disabilities, leading to the deaths of some of them, in particular in 2010, as also highlighted by the previous Commissioner.<sup>20</sup>

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<sup>15</sup> UNGA Resolution A/RES/64/142, [Guidelines](#) for the Alternative Care of Children, 24 February 2010, see par. 21 and 14.

<sup>16</sup> See paragraph 20.

<sup>17</sup> ECtHR, *A. and others v. Bulgaria*, 29 November 2011, Application No [51776/08](#), paragraph 93-98.

<sup>18</sup> See Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform (Bulgaria)*, 2014.

<sup>19</sup> ECtHR, *Nencheva and others v. Bulgaria*, 18 June 2013, (Application No. [48609/06](#)). This case concerned the death of fifteen children and young adults between 15 December 1996 and 14 March 1997 in the home for children with serious mental disabilities in the village of Dzhurkovo. In this case the Court found that the competent authorities, with the exception of the staff of the home, violated Article 2 (right to life). The home of Dzhurkovo was closed on 1 January 2006.

<sup>20</sup> In 2010, investigations into the deaths of 238 children over the previous ten years revealed that children in institutions were subjected to practices including malnourishment, violence, physical restraint and incapacitating drugs. See [Letter](#) from the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, to Mr Nickolay Mladenov, Minister for Foreign Affairs of Bulgaria, CommDH(2012)12, 22 February 2012.

27. Although the number of deaths in institutions has significantly decreased, the overall situation of children living in institutions is still a cause of serious concern. The Commissioner is worried at reports by NGOs<sup>21</sup> and the National Ombudsman concluding that children living in institutions continue to suffer from serious human rights violations and lack basic care.
28. Of particular concern to the Commissioner are serious abuses including physical and psychological violence reportedly perpetrated among children living in institutional care and also by staff members against these children. However, according to information from the Bulgarian authorities, there has been only one prosecution in the period 2013-2014: a pre-trial proceeding was initiated against an unknown perpetrator under Article 123 of the Criminal Code (death by negligence) for the death of a child at the "Home for Children with Mental Retardation" in the town of Berkovitsa in 2014. The investigation has not been completed so far. Children in institutions are also still reported to suffer from neglect and disproportionate and inadequate punishment.
29. There are also cases of labour exploitation of children as there are persons living in the surroundings of institutions for children who use the cheap labour of its residents. Children reportedly accept such labour as they often do not receive sufficient pocket money.
30. As several studies have shown, children living in institutions suffer from discrimination and stigmatisation and are still not aware of their rights.<sup>22</sup> There are also not enough possibilities for children living in institutions to exercise their rights and make use of effective and child-friendly mechanisms for submitting complaints related to human rights violations. The setting up in 2012 of a National Preventive Mechanism under OPCAT, run by the Office of the National Ombudsman, is a step in the right direction. However, such a mechanism is not sufficient to cover all the needs of systematic monitoring in the large number of existing institutions for children in Bulgaria.
31. Finally, the decision to place a child in an institution is often taken without a substantial review of the case and results in siblings being separated when this is not necessary or children being sent to children's homes or other institutions that are far away from their habitual and family environment. Several of the Commissioner's interlocutors have stressed that the right to be heard in administrative and judicial decision-making, which includes decisions on the placement of children in institutions, is hardly ever applied and that access to justice for children in institutions is far too limited.
32. Another issue of serious concern relates to access to education for children with disabilities living in institutions. In principle, the legal framework provides for the obligation to accept children with disabilities in mainstream schools<sup>23</sup>. However in practice, children with psycho-social disabilities who are still in institutions do not have real access to mainstream education.<sup>24</sup> While some concrete measures have been taken to appoint specialised educational staff in mainstream schools<sup>25</sup>, these efforts appear to be insufficient to integrate children with disabilities coming from institutions into mainstream education. Remaining obstacles include the insufficient funding for schools where children with disabilities are enrolled, and the inadequacy of individualised needs assessment and of the support provided, and the lack of trained educational staff. With reference in particular to the above-mentioned

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<sup>21</sup> See in particular Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform (Bulgaria)*, 2014.

<sup>22</sup> See in particular UNICEF-Bulgaria, *The Discrimination against children in institutional care: covert, pretended or real and perceivable*, [Report](#), 2012.

<sup>23</sup> Pursuant to the 1991 Law on Public Education as amended in 2002, children with disabilities have a right to attend mainstream schools and these schools have an obligation to accept children with disabilities as their students. Pursuant to Article 27 of the Law on Public Education, children can be sent to special schools only as a last resort and if the parents/legal guardians express such a wish in writing. Article 16 of the Law on Protection against Discrimination guarantees reasonable accommodation of children with disabilities in schools.

<sup>24</sup> This was already the conclusion drawn up by the European Committee on Social Rights considering in 2011 that children with disabilities were not guaranteed an effective right to education in Bulgaria in violation of Article 17§2 of the Revised European Social Charter. ECSR, *Conclusions 2011 (Bulgaria)*, Article 17 - Right of children and young persons to social, legal and economic protection, Paragraph 2 - Free primary and secondary education - regular attendance at school, p.23. See also ECSR, *MDAC v. Bulgaria*, Complaint No. 41/2007, [Decision on the Merits](#), 3 June 2008.

<sup>25</sup> See the 13th National Report on the implementation of the European Social Charter submitted by Bulgaria, 4 December 2014, [RAP/RCha/BUL/13\(2015\)](#), p.26-27.

“Childhood for All” project aimed at moving children with disabilities out of institutions,<sup>26</sup> NGOs have stressed that in the absence of access to mainstream schooling due to a lack of coordination with the educational sector, children will continue to be isolated in the new family-type placement centres.

#### 1.1.4 CONCLUSIONS AND RECOMMENDATIONS

33. The Commissioner welcomes the National Strategy “Vision of Deinstitutionalisation of Children” and the commitment of the Bulgarian state in this field. He stresses that the deinstitutionalisation process for children must be accelerated and hopes that the implementation of the National Strategy will be adjusted on the basis of the evaluation of the first Action Plan 2010-2015. The Bulgarian government should keep the deinstitutionalisation of children at the highest level of its agenda and send out an unambiguous message to all stakeholders that the goal is to achieve a fully inclusive society. The Bulgarian authorities should aim at closing as soon as possible the remaining social and medical care institutions for children, including the 20 infant homes, 74 children’s homes and all 24 institutions for children with disabilities.
34. Particular importance should be given to ensuring long-term funding for the establishment of independent monitoring of the deinstitutionalisation process and developing alternatives to institutions. The authorities should also establish a comprehensive system of statistical data collection with information disaggregated notably by age, disability, gender and ethnicity.
35. The Bulgarian authorities should step up their efforts to improve general preventive action against the placement of children in social and medical care institutions. The Commissioner considers that the complexity of this problem demands not only a reform of the child protection system, but also the implementation of long-term measures aimed at combating discrimination on the grounds of poverty, ethnic origin (in particular against Roma) and disability, as well as at overcoming the resistance to change by various stakeholders.
36. In order to prevent the institutionalisation of children, the Commissioner urges the authorities to develop a fully-fledged system of family- and community-based services. Further efforts to promote parental care and prevent entry into formal care, as well as to develop early intervention mechanisms, are also needed.
37. As concerns institutions for child protection, the entire system of alternative care for children temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment should be reviewed in order to bring it in line with the CRC requirements and the UN Guidelines on Alternative Care for Children.<sup>27</sup> In this respect, the Commissioner recalls that alternative care for children, especially those under three years of age, should be provided only if absolutely necessary and in family-based settings. The use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests. Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child’s return to parental care, once the original causes of removal have been resolved or have disappeared, should take place after a thorough assessment of whether it would be in the best interests of the child. The Commissioner recalls that children should have the right to be heard in decisions of placement in institutions (Article 12 of the CRC).
38. The Commissioner also recalls that financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration into the biological family, but should be seen as a signal for the need to provide appropriate support to the family. The Bulgarian authorities should investigate reports of children being taken away from their families on such grounds and take all necessary remedies, as this constitutes discrimination. Such interferences have

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<sup>26</sup> See paragraph 20.

<sup>27</sup> UNGA Resolution A/RES/64/142, [Guidelines](#) for the Alternative Care of Children, 24 February 2010.

been found by the Court to be at variance with the right to respect for private and family life protected in Article 8 of the ECHR.<sup>28</sup> These children should not be separated from their families who should be provided with support to help them out of poverty.<sup>29</sup>

39. As concerns more particularly children with disabilities, the authorities should give full effect to the guidelines contained in the Council of Europe Committee of Ministers Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities<sup>30</sup> and Recommendation CM/Rec(2013)2 on ensuring full inclusion of children and young persons with disabilities into society<sup>31</sup>. The Commissioner considers that the current Bulgarian legislation on access to education for children represents a step in the right direction, but urges the Bulgarian authorities to ensure its proper implementation by all mainstream schools.
40. Lastly, the authorities should ensure that the right of children living in all types of institutions to respect for their dignity and physical integrity is observed. The Commissioner wishes to highlight the importance of an independent, efficient monitoring mechanism to identify any forms of abuse committed against children in institutions. The Bulgarian authorities should also ensure that child victims of violence or other abuse in institutions have unimpeded access to complaints mechanisms, the justice system and effective protection. The authorities are called on to ensure that full and effective investigations into allegations of ill-treatment of children are carried out and that the perpetrators are brought to justice.

## 1.2 HUMAN RIGHTS OF CHILDREN LIVING IN JUVENILE DELINQUENCY INSTITUTIONS

41. The Commissioner is concerned at the human rights situation of children in juvenile delinquency institutions. Correctional boarding schools (CBSs), socio-pedagogical boarding schools (SPBSs) and Homes for Temporary Accommodation of Minors and Juveniles (HTAMJs) are institutions regulated by the 1958 Law on Measures against Delinquency of Minors and Juveniles (hereinafter: Law on Juvenile Delinquency). The CBSs and SPBSs are under the responsibility of the Ministry of Education while the HTAMJs are established by the Ministry of Interior.
42. The four existing CBSs are for children from 8 to 18 years old, three for boys and one for girls. There are also three SPBSs where children from 8 to 18 years old are placed. The length of the obligatory stay in these institutions can be from 6 months up to three years, but a child may stay there beyond three years and until reaching majority or completing education on a voluntary basis.
43. While CBSs and SPBSs have been established as two different types of institutions, in practice the differences between them in terms of living conditions and regime are minimal, the main one being the reasons for placement: while CBSs are intended for young offenders who are not sent to correctional homes and children who have resorted to "anti-social behaviour", SPBSs are intended for children who have resorted to "anti-social behaviour" and those considered at risk of doing so.
44. The Commissioner visited the CBS in the outskirts of the city of Podem, 30 km away from Plevan, an institution with a capacity of 40 where 35 girls were living at the time of the visit. He could note that the institution was in a rather poor material condition except for a separate transitional house aimed at facilitating return into society. This is worrying knowing that the CBS in Podem is considered to be the one with the best material conditions in Bulgaria. The institution is in a remote place with no direct access to the village.

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<sup>28</sup> For instance, in the case *R.M.S v. Spain* (Application No. [28775/12](#), Judgment of 18 June 2013), the Court stated that a situation of material deprivation in itself cannot be a sufficient ground for ordering the separation of a child from his/her natural family and that it constitutes a breach of Article 8.

<sup>29</sup> Parliamentary Assembly of the Council of Europe, [Resolution](#) 2049 (2015) on social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States, 22 April 2015.

<sup>30</sup> Committee of Ministers, Recommendation [CM/Rec\(2010\)2](#) on deinstitutionalisation and community living of children with disabilities.

<sup>31</sup> Committee of Ministers, Recommendation [CM/Rec\(2013\)2](#) on ensuring full inclusion of children and young persons with disabilities into society.

45. There are also five HTAMJs, where children aged from 6 to 18 can be placed for a period which cannot exceed 15 days with a possibility of extending their stay to up to two months in exceptional circumstances. Such a placement is possible in several cases including when children have resorted to “antisocial behaviour” or have run away from a CBS or a SPBS.
46. In these three types of institutions, children are deprived of their liberty. In particular, in the 2011 case *A. and others v. Bulgaria*, the European Court of Human Rights found that the placement in a CBS constituted a deprivation of liberty. However, it considered at that time that the placement was made for an educational purpose as authorised by Article 5-1 e) of the ECHR.<sup>32</sup>
47. Many interlocutors of the Commissioner have stressed that in Bulgaria the system of imposing these “educational measures” is a parallel system of correctional sanctions for children that is not part of the general criminal justice system. This means that the human rights standards applicable to the punishment of children under Bulgarian criminal law are not necessarily applicable to the parallel system, making children dealt with under this system somewhat more vulnerable than juvenile offenders. A clear illustration of this is that, unlike for juvenile offenders, legal assistance is not provided to children deprived of liberty under the Law on Juvenile Delinquency. The Commissioner was also informed that Child Protection Departments sometimes refuse to apply child protection measures to children placed in juvenile delinquency institutions as they are not considered as children “at risk”<sup>33</sup> despite all evidence to the contrary.
48. Children are placed in CBSs and SPBSs by decision of a non-specialised court, upon a proposal by a local commission against delinquency of minors and juveniles. As mentioned, “antisocial behaviour”, defined by law as “an act which poses danger to society and is illicit or contradicts morals and the accepted principles of morality” is one of the possible grounds for placement. This definition is insufficiently clear and allows for arbitrariness of decisions of placement in CBSs and SPBSs. Vagrancy, prostitution, begging or running away from home, for instance, have all been considered to constitute anti-social behaviour. These types of conduct constitute status offences, i.e. conduct that is not considered to be a criminal offence when committed by an adult.
49. Despite the express commitment of the government to close down SPBSs and reform CBSs, the Commissioner is concerned that at the time of drafting this report, children are still being placed in such institutions. In 2012, a total of 176 new placements in CBSs and SPBSs were ordered with correctional measures. In 2013 there were 170 new placements. About 32 % of them related to children in the lowest age group (8 to 12 years). A particular issue of concern is that there have been cases where the decision to place a child in a CBS, and therefore to deprive him of his liberty, was not taken as a last resort or for the shortest possible time, in contravention of international standards.
50. According to the Ministry of Interior’s figures, in 2013, a total of 1,190 children, including 207 children under 14 were placed in a HTAMJ. In 2014, there were 928 including 204 children under 14. In 2013, 384 children were placed in a HTAMJ for having run away from a SPBS or a children’s home and 250 from a CBS. In 2014 the figures were respectively 320 and 235. In 2013 and 2014, 822 and 808 children respectively stayed there for less than 24 hours; 330 and 301 for up to 15 days; and 38 and 24 children remained for periods longer than 15 days.
51. NGOs and state institutions, including the State Agency for Child Protection, have described the situation in all of these three types of institutions as leading to human rights abuse and even, according to a civil society organisation, to “systematic abuse of children’s rights”.<sup>34</sup> Most worryingly, cases of human rights abuse reported to the Commissioner include numerous situations of physical and psychological violence among children and from staff (including pressure by staff members on older children to force them to “punish” younger ones). In one case, the situation was so problematic, as

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<sup>32</sup> ECtHR, *A. and others v. Bulgaria*, 29 November 2011, Application No. [51776/08](#). See also the summary of the facts concerning an application made concerning the CBS for girls in Podem communicated on 17 November 2014 by the Court to the authorities (Communicated Application, *D.L. v. Bulgaria*, 17 November 2014, (only in French), Application No. [7472/14](#)).

<sup>33</sup> See the definition above, paragraph 23.

<sup>34</sup> Opening Doors for Europe’s Children, Delay in reforms leads to systematic abuse of children’s rights in Bulgaria, [news](#).

documented by the State Agency for Child Protection, that it led to the closure of the SPBS concerned in 2014.

52. There are concurring reports that vulnerable children continue to be sent to these juvenile delinquency institutions with no medical care adapted to their specific needs being accessible to them. They include victims of sexual abuse, violence or trafficking in human beings, migrant children who have been arrested for having crossed the border illegally, children with serious illnesses, children with drug addiction and pregnant girls or minor mothers who just gave birth and are therefore also separated from their babies. More generally, there is a serious lack of access to health care, notably mental health care, while children placed in such institutions are generally traumatised and would need individualised assistance. The children experience difficulties in keeping ties with their families as they live often far away and need permission each time they wish to visit. The family is also often too poor to travel to visit them.
53. In addition to the Ombudsman office and the prosecution authorities, a number of administrative bodies are entitled to investigate and intervene in cases of violence in all of these institutions and many of them have publicly reported cases of violence and other problems. The Bulgarian authorities have reported for the period 2013-2014 two pre-trial proceedings initiated on cases of physical and sexual violence against children in the SPBS in the town of Straldzha in 2013. The investigation has not been completed so far. The Commissioner notes that criticism has been expressed about the slowness of the law enforcement authorities to bring cases of abuse in juvenile delinquency institutions to court.
54. A serious matter of concern is that children who go through CBSs and SPBS are significantly discriminated against in access to education. While these boarding schools are run by the Ministry of Education and are in theory meant to serve an educational purpose and facilitate social re-insertion, the level of education is generally considered as very unsatisfactory, including by the State Agency for Child Protection. Education programmes and tools are not adapted to the individual needs of the children and the children's level of education remains very low when they leave the school. There have been allegations that children do not always attend classes as they believe that it is not obligatory. Access to vocational training is also very limited. In the CBS for girls in Podem, the only real option was to follow hairdressing and tailoring courses.
55. What is more, children living in these specific institutions encounter the same above-mentioned human rights issues as those placed in social care and medical care institutions including in terms of discrimination and stigmatisation, and overrepresentation of Roma children. All these problems are amplified by the fact that they are deprived of liberty. It is particularly worrying to read reports that in some cases the judges' decisions to place a child in a juvenile delinquency institution openly refer to the Roma origin of the child, or even, in one case, the Roma origin of the adult frequented by a girl, as part of the decision's reasoning<sup>35</sup>.
56. Given all the above-mentioned human rights issues, it is not surprising that child rights specialists from government or civil society stress the urgent need to stop placing children in CBSs and SPBs. The National Ombudsman recently called for an outright closure of these institutions.
57. However, children's experts have also pointed at the urgent need to implement a more general reform of the juvenile justice system that would also tackle human rights issues concerning children placed in correctional homes for having committed criminal law offences. In its report published in 2015, the CPT revealed serious shortcomings concerning the Boychinovtsi Correctional Home for boys, including allegations of regular beatings of inmates by custodial staff and very poor overall conditions of prisoner accommodation representing a serious health hazard for both the inmates and the staff.<sup>36</sup> In its 2008 Concluding Observations, the Committee on the Rights of the Child recommended that the state set up an adequate system of juvenile justice, including juvenile courts with specialised judges for children,

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<sup>35</sup> Pleven District Court (2013), Decision No. 801 from 19 September 2013 on Private Criminal Case No. 2253/ 2013, as quoted in Bulgarian Helsinki Committee, *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform (Bulgaria)*, 2014, p. 192.

<sup>36</sup> See CPT [Report](#) to the Bulgarian Government on the visit to Bulgaria from 24 March to 3 April 2014, CPT/Inf (2015) 12, Paragraphs 51 and 70.

throughout the country.<sup>37</sup> An important shortcoming in the current juvenile justice system is that there are few possibilities of making use of effective diversion or alternative measures to detention. Even when the possibility exists, judges do not make sufficient use of it.

58. The Government has already committed to reviewing in depth the Law on Juvenile Delinquency and more generally to establishing a new juvenile justice system which would be more in line with the international human rights standards by which Bulgaria is bound. It has already made progress towards child-friendly justice by establishing child-friendly interview settings in courts (the so-called “blue rooms”). In 2011 it adopted a Concept for State Policy in the field of juvenile justice, which envisages specialisation of the judicial system for juvenile justice, although it does not establish specialised courts. An implementing Action Plan for the period 2013-2020 was also adopted in 2013 and a Roadmap covers the years 2013 and 2014. The Roadmap includes the goal of closing down SBSs and reforming CBSs.
59. Regrettably, the much needed juvenile justice reform announced in 2011 has been delayed until now. The Commissioner understands that a draft law on juvenile justice has already been prepared by the government but that it has not yet been tabled in parliament. NGOs stressed in March 2015 that they felt a lack of political will for change in the area of justice for children, which in practice leads to a lack of action.<sup>38</sup>

### 1.2.1 CONCLUSIONS AND RECOMMENDATIONS

60. The Commissioner expresses his deep concern at the persistence of a wide range of human rights violations resulting from the existence of the 1958 Law on Juvenile Delinquency and related practice. He urges the authorities to reform the juvenile justice system with no further delay and in particular repeal the obsolete Law on Juvenile Delinquency as it is at variance with international children’s rights standards. He notes that the state already acknowledged several years ago the need for a reform and strongly urges the Bulgarian authorities to take all necessary measures to shift from the current repressive approach towards a protective one. This should start with an immediate ban on placing children in CBSs and SPBs and continue with the rapid phasing out of all these institutions.
61. The Commissioner urges the Bulgarian authorities to drop status offences as they constitute discrimination against children on the grounds of age. Behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents or other caregivers and measures which address the root causes of this behaviour, as established in international standards.<sup>39</sup>
62. The Commissioner recalls that Article 46 of the UN Guidelines for the Prevention of Juvenile Delinquency states that the institutionalisation of young persons in the context of preventing juvenile delinquency should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Such placements should only be made possible if the child has suffered harm by parents, has been neglected, abandoned or exploited by parents, threatened by physical or moral danger due to the behaviour of the parents, because of the serious physical or psychological danger due to his/her own behaviour and no other alternative is possible.
63. The Commissioner also recalls his recommendations concerning access to justice and complaints mechanisms for children placed in institutional care as they are also valid for children placed in juvenile delinquency institutions.<sup>40</sup>

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<sup>37</sup> Committee of the Rights of the Child, Concluding Observations: [Bulgaria](#), 23 June 2008, CRC/C/BGR/CO/2, 2008, paragraph 69.

<sup>38</sup> See National Network for Children, National Network for Children Supports the Extension of the Concept of a Child at Risk in the Draft Roadmap to Implement State Policy for Children and Juvenile Justice, [news](#), 19 March 2015.

<sup>39</sup> See the United Nations [Guidelines](#) for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), paragraph 56 and the Committee for the Rights of the Child’s General Comment [No. 10](#) (2007) on Children’s Rights in Juvenile Justice, paragraph 4a.

<sup>40</sup> See paragraph 40.

64. The Bulgarian authorities should use the reform of the juvenile justice system as an opportunity to fulfil their obligations under Articles 37 and 40 of the CRC dealing with juvenile justice.<sup>41</sup> They provide for detention as a last resort, the right to dignity of the detained child, fair trial and minimum age for criminal liability, and the necessity to offer alternatives to detention. In addition, Article 3 of the CRC states that the best interests of the child must be a primary consideration in all decisions of the authorities concerning him/her. According to the Committee on the Rights of the Child, this means that the traditional objectives of criminal justice (repression/retribution) must give way to rehabilitation and restorative justice objectives in dealing with child offenders. The Commissioner also draws attention to the Issue Paper on children and juvenile justice published by his Office.<sup>42</sup>
65. All children in conflict with or coming into contact with the law should be treated according to the Council of Europe Committee of Ministers Guidelines of 2010 on Child Friendly Justice.<sup>43</sup> As stressed in these guidelines, a child-friendly justice system should be “accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child”. It should duly take into account the evolving capacities of the child.

### 1.3 HUMAN RIGHTS OF ADULTS WITH DISABILITIES IN INSTITUTIONS

66. Bulgaria ratified the UN Convention on the Rights of Persons with Disabilities (UN CRPD) on 22 March 2012. It also signed the Convention’s Optional Protocol providing for an individual complaints mechanism on 18 December 2008 but has not yet ratified it.
67. Bulgaria has an established legal and institutional framework for the protection and promotion of the rights of persons with disabilities. In particular, the 2004 Law on the Integration of Persons with Disabilities provides for the right to equal treatment, education, employment and social integration. There is an Agency for Persons with Disabilities within the Ministry of Labour and Social Policy (MLSP). The National Council for the Integration of Persons with Disabilities is a consultative body at the Council of Ministers, chaired by the MLSP and including representatives of persons with disabilities and civil society NGOs. Both the National Ombudsman and the Commission for the Protection against Discrimination are competent to deal with complaints of discrimination and human rights abuses lodged by persons with disabilities. However, to date, the government has neither designated nor established a mechanism to independently monitor the implementation of the UN CRPD at national level, as requested by Article 33-2 of the Convention.
68. In 2007, Bulgaria adopted a Strategy for Equal Opportunities for People with Disabilities (2008 – 2015), which was updated further to the ratification of the UN CRPD in 2012. An Action Plan for the implementation of the UN CRPD (2013-2014) was agreed by the Council of Ministers in October 2012 and a co-ordination group for the execution of this plan was established in February 2013.
69. Despite these significant changes in recent years, persons with disabilities living in institutions remain confronted with obstacles to the exercise of their human rights in a number of fields. In this section, the Commissioner focuses in particular on the persisting institutionalisation of adults with disabilities and the related need to reform the legal capacity regime.

#### 1.3.1 PERSISTING INSTITUTIONALISATION OF ADULTS WITH DISABILITIES

70. Currently, there are over 5,600 adults with disabilities living in social care institutions in Bulgaria. The majority of them still live in large institutions. According to figures from the MLSP, in 2014, there were: 27 homes for “adults with mental disabilities” accommodating 2,136 persons; 13 homes for “adults with

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<sup>41</sup> The CRC is complemented by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) as well as the Committee for the Rights of the Child’s General Comment No. 10 (2007) on Children’s Rights in Juvenile Justice.

<sup>42</sup> Council of Europe Commissioner for Human Rights’ [Issue Paper](#), Children and Juvenile Justice: Proposals for Improvements, 19 June 2009.

<sup>43</sup> Council of Europe Committee of Ministers [Guidelines](#) on Child Friendly Justice.

mental disorders” accommodating 1,000; 21 homes for adults with physical disabilities accommodating 1,300; four homes for adults with sensory impairments accommodating 433; and 14 homes for “adults with dementia” accommodating 825 persons.

71. Bulgaria has expressed its commitment towards enabling these persons to move out of institutions and live within the community notably by adopting in 2010 the “Vision for the Deinstitutionalisation of People with Intellectual Disabilities, Mental Health Problems and Dementia 2010-2011” and a Plan for its implementation. According to this plan, 4,441 people with mental health problems and intellectual disabilities living in institutions should have moved to small group homes and receive day care services. The Action Plan for the implementation of the UN CRPD also contains as a goal deinstitutionalisation of adults with disabilities.
72. However, during his visit, the Commissioner was informed that the deinstitutionalisation process for adults with disabilities started only recently, and that progress in this field is very slow. In addition, partly because of the absence of adequate alternatives, there is still reported to be a long waiting list of adults with disabilities for placement in existing institutions.
73. The few persons who have moved out of large institutions often went to newly created protected homes or family-type centres for adults (accommodating up to 15 persons), as foreseen by the Strategy. However, there are reports indicating that, in many cases, these solutions do not enable residents to live in the community. In some cases this is because these facilities have been built in the very yards of large institutions such as social care homes or psychiatric hospitals. In general, these changes have been described by a number of observers as being mostly of a cosmetic nature, reflecting a misunderstanding of the concept of living in the community, and resulting in practice in a transition from larger to smaller institutions. There are reports that such transitions have in some cases taken place with the use of EU structural funding, although NGOs stress that it is very difficult to get access to data in this regard.
74. At the same time, in reaction to serious criticisms as to the living conditions of adults with disabilities in large institutions, the Bulgarian authorities have started to take steps to improve the situation in a number of these institutions, including by repairing the old buildings. The Commissioner wishes to stress that the main focus of a human-rights compliant response to this problem must be on the rapid creation of genuine community-based alternatives to institutions, not on the refurbishment of existing settings. It is therefore reassuring that the Government has expressed its will to create solutions which are more in line with the UN CRPD. It stated in 2013 that the “construction of a well-functioning network of social services in the community providing quality long-term care is a top priority for its social policy”.<sup>44</sup>
75. In this connection, the Commissioner notes that the number of community-based services is reportedly growing. Some forms of assistance (personal assistance, social assistance and assistance at home) are increasingly available to people with intellectual and psycho-social disabilities. However, this is still on a project basis and the number of projects is clearly insufficient. In general, the current personal assistance system is not tailored to the needs of the persons supported and the current eligibility criteria leave some of those who need assistance out of the scheme. Bureaucracy is also said to hinder access to personal assistance.

### 1.3.2 LEGAL CAPACITY OF ADULTS WITH INTELLECTUAL AND PSYCHO-SOCIAL DISABILITIES

76. One of the main obstacles to the deinstitutionalisation of adults with intellectual and psycho-social disabilities is the current system of legal guardianship which often leads to the placement of these persons in institutions, as clearly illustrated by two individual cases brought before the Court (see below).
77. Under the Law on Persons and Family, persons “who are unable to look after their own interests on account of mental illness or mental deficiency” are to be entirely deprived of legal capacity and declared

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<sup>44</sup> Initial Report on the implementation of the CRPD to the Committee on the Rights of Persons with Disabilities covering the period 2012-2013: Bulgaria, [CRPD/C/BGR/1](#).

legally incapable. They are placed under full guardianship and the guardian takes all decisions for the person in question, including where he/she is to live. The persons deprived of legal capacity are also stripped automatically of their right to marry and their right to vote.<sup>45</sup>

78. The law further provides that adults with milder forms of such mental disorders are to be partially incapacitated. They are placed under partial guardianship. They are fully deprived of their right to vote and cannot perform a legal transaction without their legal guardian's consent, except for acts forming part of everyday life. This means that a decision on the place of living requires the consent of the guardian.
79. According to National Statistics, there are 7,040 adults with disabilities in Bulgaria who are deprived of legal capacity, a large majority of whom (6,249) are under full guardianship and 791 under partial guardianship. As stressed by specialised NGOs, it is not unusual that the legal guardian is the director of an institution where the person with disabilities is placed, which means that there is a conflict of interests between the guardian and the person under guardianship.<sup>46</sup>
80. The Commissioner notes that the European Court of Human Rights has found in two cases that the placement by legal guardians of incapacitated persons in Bulgarian institutions constituted unlawful deprivation of liberty. In its judgment in the case of *Stanev v. Bulgaria* the Grand Chamber of the Court established that the placement in a social care home of a person under partial guardianship by a state official amounted to deprivation of liberty due to several factors, including the authorities' involvement in the placement. The Court found that the restrictive regime there, the lack of consent of the applicant and the duration of the measure was a violation of Article 5§1 (right to liberty and security). The unavailability of a judicial remedy affording the applicant the direct opportunity to challenge the lawfulness of his placement in a social care home and the continued implementation of the measure was found to constitute a violation of Article 5§4 on the right to challenge the lawfulness of a detention. The Court also found a violation of Article 5§5, which provides for an enforceable right to compensation for persons deprived of their liberty, on account of the non-availability of such a right to the applicant.
81. In its judgment in the case of *Stefan Stankov v. Bulgaria*, the Court's Chamber reached similar conclusions on violation of Article 5§1, 5§4 and 5§5 of the Convention. In this case, a domestic court had declared the applicant's partial incapacity on the grounds that he suffered from schizophrenia which in the domestic court's view had led to a change in personality and deprived him of the ability to manage his own affairs and interests. He was then placed in 1999 by his mother, as his guardian, in the Dragash Voivoda, a social care home for men with "mental disorders". In 2002, he was transferred to the Rusokastro home for adults with a "mental deficiency".
82. Access to justice is also one of the main problematic aspects of the current legislation on legal guardianship. In the *Stanev* case, the Court stated that there had been a violation of the applicant's right to access to a court (Article 6 §1) due to the impossibility for the applicant, as a person placed under partial guardianship, to request directly before a court the restoration of his legal capacity. The Court recommended that Bulgaria envisage the necessary general measures in order to ensure the effective possibility of such direct access. The Commissioner notes that the National Ombudsman challenged the current legislation on legal capacity before the Constitutional Court on grounds that it is at variance with Article 12 of the UN CRPD. While the Constitutional Court did not find the guardianship system to be unconstitutional, it highlighted the need for legislative reform to bring the country into compliance with Article 12 of the UN CRPD.
83. The Bulgarian authorities have expressed their commitment to moving from substituted decision-making to supported decision-making which respects the person's autonomy, will and preferences in

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<sup>45</sup> Under Article 42(1) of the Constitution, persons under guardianship are not allowed to vote in Bulgaria. As only people who have the right to vote can create political parties under Bulgarian current legislation, this results in a ban for people under guardianship on any other political activities.

<sup>46</sup> See Mental Disability Advocacy Center (MDAC), *Legal Capacity in Europe, A call to Action to Governments and to the EU*, October 2013, p. 55.

accordance with Article 12 of the UN CRPD.<sup>47</sup> To this end, they have prepared a draft law on “natural persons and support measures” that went to public consultation in October 2014. The responses are currently being considered by the government. Under the draft law as it stood in October 2014, a person with intellectual and psycho-social disabilities would never lose his/her legal capacity. A court would be competent to decide upon support measures when the person is not in a position to decide for himself/herself. As a last resort, the court could place a person under partial guardianship through a reasoned decision. The draft law provides for a periodical judicial review (every two years) of the court’s decision on support measures and guardianship. The person placed under guardianship would be entitled to challenge the decision directly before the court (without having to obtain the consent of the guardian). The draft law would have a retroactive effect, which means that all guardianship decisions would have to be reviewed.

### 1.3.3 CONCLUSIONS AND RECOMMENDATIONS

84. Isolating persons with disabilities in institutions perpetuates their stigmatisation and marginalisation, in violation of their right to live independently in the community, guaranteed by Article 19 UN CRPD. Under this Article, Bulgaria is bound to take measures to ensure that persons with disabilities have effective access to a range of community-based arrangements including the personal assistance necessary to support independent living and inclusion in the community.
85. The Commissioner strongly urges the Bulgarian authorities to speed up the process of deinstitutionalisation of persons with disabilities with the active involvement of persons with disabilities and their representative organisations. The first step in this respect should be to immediately stop new placements in institutions.
86. The authorities should review their strategy by setting measurable goals and by incorporating quantitative and qualitative indicators, which should be consistently monitored in order to sustain progress. There is a need to address the whole institutional culture, by placing the wishes and choices of the individual at the heart of the provision of services. The authorities should also take measures to offset potential short-term economic effects which may create resistance to deinstitutionalisation at the local level, and continue to address the fears and prejudices of the general public towards persons with disabilities through education and awareness-raising.
87. The Commissioner also calls on the Bulgarian authorities to move resources from institutions to the development of individualised support services. The Commissioner stresses that any measure taken by the government should focus on meeting the preferences and will of the persons with disabilities.
88. The Bulgarian authorities are encouraged in their steps to create new living settings which comply with Article 19 UN CRPD. They should avoid opening new - even if smaller - institutions. The Commissioner wishes to stress that the more specific services are provided within the residence, the less opportunities for contacts with the outside world are available to the residents in practice, as highlighted in the Issue Paper published by the Commissioner’s Office on the right of people with disabilities to live independently and be included in the community.<sup>48</sup> A 2012 study on Article 19 of the CRPD, prepared by the UN Office of the High Commissioner for Human Rights, also underlines that “[s]maller institutions are no less objectionable than larger ones particularly where the structural opportunities for real engagement in community life are absent. Congregated settings generally draw attention to the commonality of their residents (disability) rather than to their innate personhood and thereby militate against open intercourse with civil society”.<sup>49</sup>
89. As concerns the right to legal capacity of persons with disabilities, the Commissioner notes the commitment of the Bulgarian authorities to a paradigm shift from substituted to supported decision-

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<sup>47</sup> Initial Report on the implementation of the CRPD to the Committee on the Rights of Persons with Disabilities covering the period 2012-2013: Bulgaria, [CRPD/C/BGR/1](#).

<sup>48</sup> Council of Europe Commissioner for Human Rights, [Issue Paper](#) on the right of people with disabilities to live independently and be included in the community, 2012, p. 13.

<sup>49</sup> See OHCHR Regional Bureau for Europe, *Getting a Life: Living Independently and Being Included in the Community*, April 2012.

making. The Commissioner urges the Bulgarian authorities to move forward with modifying the legislation so as to comply as soon as possible with the requirements of Article 12 of the UN CRPD. Plenary guardianship should be abolished as a first step. The Commissioner stresses that everything should be put in place to give persons with disabilities access to the necessary support to make decisions about where and with whom to live or what community services to use. In this respect, the Commissioner welcomes the draft law on “natural persons and support measures” and considers that its adoption would be a very positive step. He stresses, however, that its successful implementation would require a carefully designed and adequately resourced supported decision-making system, and encourages the Bulgarian authorities to make sure that the two processes are conducted in parallel.

90. Lastly, the Commissioner encourages Bulgaria to ratify the UN CRPD’s Optional Protocol providing for an individual complaints mechanism and which it signed in 2008.

## 2 HUMAN RIGHTS OF IMMIGRANTS, ASYLUM SEEKERS AND REFUGEES

91. Bulgaria is at the crossroads of migratory movements along the South-Eastern border of the European Union. In 2013, the country experienced a sharp increase in arrivals of migrants, particularly Syrians in search of international protection. Thus, compared with an annual average of 1,000 over the previous decade, in 2013 alone Bulgaria received 7,145 asylum applications. In 2014, there were 11,081 applications, the vast majority of which were filed by people coming from Syria (6,254) and Afghanistan (2,968). As for 2015, in March, the head of the State Agency for Refugees (SAR) declared that Bulgaria expected to grant asylum to over 10,000 persons by the end of the year.
92. Bulgaria ratified the 1951 Convention relating to the Status of Refugees and the 1967 Protocol in 1993. The Law on Foreigners was adopted in 1998 and the Law on Asylum and Refugees (LAR) in May 2002. Both were amended several times and the LAR is currently being reviewed.
93. While noting the efforts made by the Bulgarian authorities to assist the high numbers of people arriving, the Commissioner is worried at several continuing shortcomings in asylum policies and practices. The hardening of the political discourse around asylum seekers and immigrants is also of serious concern, not least as it helps to lay the grounds for the possible introduction of legislation whose compliance with international human rights standards is dubious, as explained further below. In this section, the Commissioner wishes to raise a number of concerns relating to the reception of asylum seekers and the asylum procedure, border control and access to protection, detention of migrants, and the integration framework.

### 2.1 RECEPTION OF ASYLUM SEEKERS AND ASYLUM PROCEDURES

94. Despite warnings from several stakeholders, Bulgaria was caught seriously unprepared for the high number of asylum seekers who arrived in 2013, mainly from Syria. The reception conditions and asylum procedures in place at that time turned out to be totally inadequate to absorb this sudden influx. This situation lasted for several months until the Bulgarian authorities, mainly with the help of UNHCR, NGOs, the European Asylum Support Office (EASO) and the EU Refugee Fund managed to improve living conditions and the functioning of the asylum system as of March 2014.
95. The Commissioner, following a mission to Bulgaria at the end of 2013 which included a visit to the open reception centre in the Voenna Rampa neighbourhood, called on 20 December 2014 for a stop to returns of Syrian refugees to Bulgaria from other EU countries under the Dublin Regulation.<sup>50</sup> On 2 January 2014, considering that asylum seekers in Bulgaria faced a real risk of inhuman or degrading treatment due to systemic deficiencies in reception conditions and asylum procedures in the country, UNHCR called for the suspension of all transfers to Bulgaria under the Dublin Regulation.<sup>51</sup>
96. Before the high influx of Syrian refugees that started in 2013, there were three reception centres.<sup>52</sup> At the end of 2013, four new centres were opened in haste in disused schools or other derelict premises.<sup>53</sup> However, on 1 November 2014, the Kovachevtsi centre, reportedly the best equipped among all reception centres, closed down. The Bulgarian authorities have informed the Commissioner that they now intend to open new centres in disused military facilities. Since the end of 2013, the living conditions of asylum seekers in reception centres have generally improved. The Commissioner could see the progress made when visiting the reception centre of Voenna Rampa (a renovated former school) for the second time. By way of example, the sports hall of the old school which at the time of the first visit in

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<sup>50</sup> Commissioner for Human Rights, Syrian refugees: a neglected human rights crisis in Europe, Human Rights [Comment](#), 20 December 2013.

<sup>51</sup> UNHCR, [Observations](#) on the current situation of asylum in Bulgaria, 2 January 2014.

<sup>52</sup> The reception centres in Ovcha Kupel, Sofia and in Banya, central Bulgaria, and the transit centre in Pastrogor, next to the Bulgarian-Turkish border.

<sup>53</sup> The reception centres concerned are: Vrazhdebna, Sofia, with capacity of 300; Voenna Rampa, Sofia, with a capacity of 700 places; Harmanli, close to the Bulgarian-Turkish border, with a capacity of 1,450; and in Kovachevtsi, with a capacity of 350 (now closed).

December 2013 was used for accommodating families and proved to be totally unfit for that purpose was used in February 2014 as a sports facility for asylum seekers staying in the centre.

97. However, the Commissioner considers that the progress achieved is fragile and that a new influx of refugees and/or possible readmissions or returns under the Dublin regulations could quickly reverse it.<sup>54</sup> On 15 April 2014 UNHCR updated their guidance on the situation of refugees and asylum-seekers in Bulgaria. While it lifted the call for the temporary suspension of all Dublin transfers of asylum-seekers to Bulgaria that it made in January, it noted that serious gaps in the system still remained, and that there might be reasons not to transfer certain groups or individuals, in particular those with specific needs or vulnerabilities. UNHCR encouraged states to conduct individual assessments in these cases.<sup>55</sup> In April 2014, ECRE<sup>56</sup> and Amnesty International<sup>57</sup> reiterated their call for all member states to stop sending asylum seekers to Bulgaria under the Dublin Regulations.
98. During the visit, the Bulgarian authorities assured the Commissioner that they will provide SAR with all the financial means necessary for the accommodation of asylum seekers. The Commissioner is concerned, however, at indications that the annual budget allocated to the SAR cannot fully sustain the maintenance of the current material conditions.
99. As concerns asylum procedures, since the end of 2013, the SAR has managed to reduce the asylum applications backlog by finalising the registration of all asylum seekers in February 2014. The Commissioner notes that in 2013, 183 applicants were granted refugee status, 354 were refused and 2,279 persons were granted humanitarian protection. There was a shift in 2014 as 5,162 applicants were granted refugee status and 500 were refused, while 1,838 applicants were granted humanitarian protection. The duration of the status determination procedure went down to six months on average. The authorities started to prioritise applications from Syrian nationals considered as prima facie refugees, therefore facilitating and accelerating the procedure for them. As a result, recognition rates increased significantly. However, the Commissioner was informed that persons from other countries of origin, in particular from the sub-Saharan region, find it difficult to file a claim for asylum.
100. In March 2013, the Law on Legal Aid was amended to introduce free legal aid for asylum seekers at all stages of the status determination procedure, including the first-instance administrative stage, to be financed with the state budget. Before the law was amended, state-funded legal aid was only available to asylum seekers for the appeals, which are dealt with by courts. Regrettably, in practice, the National Bureau for Legal Aid in the Ministry of Justice is currently not in a position to finance legal aid from the beginning of the procedure. As a result, for the moment, legal assistance is given by private providers but the quality of these legal services is reportedly poor. The Bulgarian authorities have informed the Commissioner that they have been working on securing a sustainable budget for free and adequate public legal aid for asylum seekers throughout the procedure.
101. One of the main issues of concern is the lack of early identification, assessment and referral mechanisms in place for vulnerable asylum-seekers with specific needs, including unaccompanied children, and the lack of specific support for these persons. In particular the psycho-social, educational and accommodation needs of unaccompanied children remain unaddressed.
102. Another important problem is that unaccompanied children are still not assigned a legal guardian in practice. The law provides for an immediate appointment of a legal guardian but also allows for the appointment of a social worker to assist the child during the examination of the application for asylum if no legal guardian was appointed, and this is reported to occur in many cases. According to UNHCR, the

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<sup>54</sup> In 2014 Bulgaria agreed to readmit as a whole 1,368 persons and out of these 684 were effectively readmitted in that year. The number of asylum-seekers returned under the Dublin procedure is reported to be much lower. 184 people were returned under this procedure in 2014 according to the UNHCR.

<sup>55</sup> UNHCR, Bulgaria: UNHCR says asylum conditions improved, warns against transfer of vulnerable people, [Briefing Notes](#), 15 April 2014.

<sup>56</sup> ECRE, ECRE [reaffirms](#) its call for the suspension of transfers of asylum seekers to Bulgaria under the recast Dublin Regulation, 7 April 2014.

<sup>57</sup> See Amnesty International, Suspension of returns of asylum-seekers to Bulgaria must continue, March 2014, [EUR 15/002/2014](#).

lack of legal guardianship prevents unaccompanied children from obtaining identification documents and accessing social services and puts them at further risk of exploitation and homelessness. As concerns the age determination procedure, the Commissioner understands that under the law, the benefit of the doubt should be granted to the child. While courts are applying that rule, according to NGOs, even in the presence of a court case in favour of the child, the administration does not respect the court's decisions and still considers the person in question as an adult.

103. Other shortcomings in the asylum procedure need to be addressed including access to interpretation and information on rights and obligations as well as legal and social counselling. Access to medical services in reception centres also remains generally unsatisfactory.

## 2.2 BORDER CONTROLS AND ACCESS TO INTERNATIONAL PROTECTION

104. In December 2013, the Commissioner asked European countries, including Bulgaria, to keep their borders open to allow Syrian refugees to access their territory to seek and enjoy asylum, and to immediately cease any expulsions of Syrians at their borders and other practices contrary to the principle of non-refoulement.
105. On 6 November 2013, the Bulgarian Council of Ministers established a new policy to prevent irregular entry at the Bulgarian-Turkish border, called the "plan for the containment of the crisis resulting from stronger migration pressure on the Bulgarian border" (containment plan). This entailed deploying an additional 1,500 police officers at the border, supplemented by a contingent of guards from other EU member states through Frontex, and the construction of a fence along a 33-kilometer stretch of the Turkish border.
106. While the fence was completed only on 17 July 2014 after delays, a significant drop in new arrivals could be noted immediately after the deployment of the additional officials at the border, from several hundred a week for the period August - November 2013 to 138 individuals in December 2013. UNHCR reported that only 99 people crossed into Bulgaria from Turkey in January 2014. Between 1 January and 31 March 2014, 376 third-country nationals were apprehended throughout the country for irregular entry through the land border and 86 at official border crossings at the Turkish border. In January 2015, the Ministry of Interior reported 6,499 established irregular entries at the state border in 2014 (as opposed to 11,618 in 2013). 6,023 came in from Turkey and 324 from Greece. 2,239 refusals of entry were registered, mainly for people arriving from Turkey. The top countries of origin of the persons returned to Turkey were Syria, Iraq and Afghanistan, which are also the top countries of origin of persons claiming asylum in the country. The Bulgarian authorities also reported that in 2014, 38,500 persons were identified in Turkey as trying to approach the Bulgarian border.
107. Several stakeholders have severely criticised the new policy and practice of the Bulgarian authorities as being at odds with Bulgaria's international and European international protection obligations. The Bulgarian authorities have stressed that the borders with Turkey are not closed to persons seeking asylum, but that the latter have to use the official border crossing points. However, UNHCR and NGOs indicate that this cannot be considered as the solution to the problem given that Turkish border officials posted at the other side of the border would not let migrants without visa or other valid documents cross to go to Bulgaria. There are reports that since the establishment of the border patrols and the fence, more and more migrants try to cross in a clandestine way by hiding in trucks and other vehicles.
108. Worryingly, the Commissioner received consistent reports of push-backs of migrants, in some cases accompanied by excessive use of force, violence and/or ill-treatment, carried out by the Bulgarian law enforcement authorities at the Bulgarian-Turkish border since the reinforcement of the checks by the Bulgarian authorities.<sup>58</sup> Border police are alleged to have summarily and forcibly expelled third-country

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<sup>58</sup> See in particular, Human Rights Watch, Containment Plan, Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants, [Report](#), 29 April 2014; Pro Asyl, Bulgaria: Brutal Push Backs at the Turkish border, 5 April 2014; Bordermonitoring Bulgaria, Child beaten at EU border: Brutal Push Backs continue in [Bulgaria](#), 25 April 2014; Bordermonitoring.eu, Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in [Bulgaria](#), 2014; Amnesty International, The human cost of Fortress Europe: human rights violations against migrants and refugees at Europe's borders, 9 July 2014, [EUR 05/001/2014](#); Human Rights Watch 2014, [Bulgaria](#): New Evidence Syrians forced back to

nationals to Turkey without giving them the opportunity to seek asylum. The Commissioner notes that in one case, a migrant declared that he had crossed the border and been sent back not less than eight times by Bulgarian law enforcement officers pointing guns at his head.<sup>59</sup>

109. One of the most recent alleged cases concerned 12 Iraqis belonging to the Yezidi minority who were stopped by Bulgarian border guards as they tried to enter from Turkey. The Iraqis had their belongings seized and were badly beaten. The group scattered and two of the men, suffering from severe injuries, died later of hypothermia on the Turkish side of the border. According to the reports, a third person was taken in critical condition to a hospital in Edirne after the Turkish authorities were alerted.<sup>60</sup>
110. The Commissioner regrets that in response to the numerous allegations of push-backs and other related human rights violations, the Bulgarian government has refused so far to open investigations. The new government which took office in November 2014 has clearly indicated that it will continue reinforcing controls at borders to prevent illegal entry. Faced with what seems to be a new increase in arrivals of asylum seekers, it has announced that it will extend the fence along the Turkish border to make it 170 km long.

### 2.3 DETENTION OF MIGRANTS AND ASYLUM SEEKERS

111. There are two detention centres for irregular migrants in the country: one in Busmantsi, close to Sofia, and another in Lyubimets, close to the border with Turkey and Greece. Although designed for the detention of irregular migrants in view of deportation, the centres are also in practice used for detention of undocumented asylum seekers pending their registration by the SAR. A "distribution centre" also operates under a closed regime in Elhovo, in the South-East of the country (see below).
112. Under the Law on Foreigners in the Republic of Bulgaria, administrative detention of third-country nationals can be ordered by the border or immigration police on grounds of unauthorised entry, irregular residence or lack of valid identity documents with a view to their removal from the country. The maximum detention period is 18 months, including extensions. Extensions beyond six months can be ordered only by a court. Under the law, a foreign national shall be released as soon as the reasonable possibility for their deportation no longer exists due to legal or technical reasons. Since 2009, there is an automatic judicial review of all cases of administrative detention every six months.
113. Under Bulgarian legislation, asylum seekers cannot be detained. However, only persons whose asylum claims have been formally registered are considered as asylum seekers for this purpose. Persons who have expressed their intention to apply for asylum but have not yet been able to formally register their claim -- the law does not establish maximum time limits in this respect -- are considered as irregular migrants and are therefore automatically brought to one of the detention centres. The Administrative Court of Sofia recently decided that this practice was in contravention of European law and that the moment the person files a claim for asylum, they should be considered as an asylum-seeker and therefore released from immigration detention.<sup>61</sup> However, detention of asylum seekers who have not been able to formally lodge their application is said to occur on a routine basis. This includes unaccompanied children, who continue to be detained, including together with adults. The Commissioner has also received worrying allegations whereby applications by foreigners who do not

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Turkey; UN News service, UN agency concerned over plight of refugees after 2 Iraqis die at Bulgarian border, [News](#), 31 March 2015. See also information according to which on 1 April 2014, the European Commission confirmed having launched infringement procedures against Bulgaria where the Commission had reports of possible refoulement of Syrian refugees: ECRE, European Commission launches infringement procedures against Bulgaria and Italy for possible refoulement of Syrian refugees, [newsletter](#) 4 April 2014.

<sup>59</sup> See Amnesty's global human rights [blog](#), Push-backs across the border? , posted on 17 July 2014.

<sup>60</sup> See UNHCR UN News service, UN agency concerned over plight of refugees after 2 Iraqis die at Bulgarian border, [News](#), 31 March 2015.

<sup>61</sup> Sofia Administrative Court, decision 5941of 10 October 2014, case No. 6486/2014, quoted in Center of Legal Aid Voice in Bulgaria, Vulnerability and Protection: identifying vulnerable persons among asylum seekers in Bulgaria, final report, February 2015.

originate from Syria are not registered, or are only registered at a later stage, which means that the persons concerned remain in detention for longer periods of time.

114. According to figures from the Ministry of Interior, in 2013 9,833 persons were placed in one of the three closed centres and out of them 8,504 applied for asylum and were transferred to one of the centres run by the SAR. There were respectively 11,017 and 9,876 in 2014. For 2015, as of February, there were 444 persons detained in Busmantsi (with a capacity of 400) and 281 in Lyubimets (with a capacity of 300) and 316 persons were staying in Elhovo (with a capacity of 240). Out of these 1,041 detained persons, 649 applied for asylum.
115. The average duration of detention of those who applied for asylum from the closed centres was 45 days in 2013 and 11 days in 2014. However, there are cases of persons who remained in detention for several months. According to a recent study, 70% of interviewed foreigners declared that they had been detained by the border police for a duration of three to six days, with cases of prolonged detention (between one and two and a half months) having also been reported.<sup>62</sup> While the Law provides for weekly reporting to the Ministry of Interior as an alternative to detention, this option does not seem to be used in practice.
116. The Commissioner notes that detention of non-citizens has been the subject of numerous judgments in which the Court found Bulgaria in violation of its ECHR obligations. These cases concern notably detention for the purpose of deportation of foreign nationals based on national security grounds. Problems raised include unlawful detention due to excessive periods of time and the lack of speedy and effective judicial control of the lawfulness of detention pending expulsion.<sup>63</sup>
117. In a positive move, the Law on Foreigners was amended in March 2013 to prohibit the detention of unaccompanied children in general. If an unaccompanied child is found as staying illegally on the territory, he/she will be referred to the Child Protection Department that will apply protective measures. The Commissioner regrets that the law still allows detention of children with their parents, although a maximum period of three months was introduced for these cases.
118. On 8 October 2013 a new "distribution centre" with a capacity of 240 persons was opened in an old school in the town of Elhovo. This centre is operated under a closed regime by the Migration Directorate of the Ministry of Interior. While it is designated for pre-registration of asylum seekers, in practice it is used to detain asylum seekers apprehended at the land borders outside the official border checkpoint. Detention in this centre could last up to several weeks in March 2014 but its average duration is currently reported to be three to six days. Those who lodge an application for asylum are then transferred to an open reception centre. However, when no such application is registered, the practice is to either keep the person concerned in Elhovo or transfer him/her to one of the administrative detention centres.
119. The Commissioner is concerned at reports of seriously substandard material conditions in administrative detention centres and of numerous instances of ill-treatment. While the 2012 report of the Committee for the Prevention of Torture (CPT) included specific recommendations to the Bulgarian Government to improve the conditions in the Busmantsi detention centre, NGOs have reported no progress in their implementation so far. Detainees in both Busmantsi and Lyubimets reportedly complained in 2014 of abusive, sometimes violent, treatment by guards, overcrowding and noise, tension among various nationality groups, the mixing of unaccompanied children with adults, dirty and insufficient toilets, inadequate ventilation, and the poor quality of the food. They also indicated that they had limited means to communicate with the outside world, as well as a lack of communication with guards and other authorities. This resulted in a lack of awareness about procedures relating to release or asylum procedures.

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<sup>62</sup> Center of Legal Aid Voice in Bulgaria, *Vulnerability and Protection: identifying vulnerable persons among asylum seekers in Bulgaria*, final report, February 2015.

<sup>63</sup> See for a summary of the cases and updated information the Action Plan submitted by the Bulgarian authorities concerning the C.G and other group of cases against Bulgaria (Application n° 1365/07), Council of Europe Committee of Ministers, [DH-DD\(2015\)55](#).

120. In addition, the Commissioner is concerned at the apparent hardening of the Bulgarian authorities' position concerning the use of administrative detention of foreigners as reflected in the 2013 draft amendments to the Law on Asylum and Refugees. The draft law envisages detention of asylum seekers in closed-type centres as a rule with accommodation in open reception centres becoming the exception. It also provides for detention of unaccompanied children seeking asylum in closed facilities although under exceptional circumstances and in separate premises within a closed centre. The draft law was severely criticised on several grounds by human rights NGOs and UNHCR<sup>64</sup> including for foreseeing a strict detention regime with few legal safeguards for people seeking international protection and with no specific provisions for avoiding the detention of persons in a vulnerable situation. The Bulgarian authorities have indicated that the draft law aims to transpose the recast Reception Conditions and Asylum Procedures Directives.<sup>65</sup> However, national NGOs consider that the draft falls short of the EU norms, which are already to be considered as minimum standards.
121. Under Article 279 of the Criminal code, foreigners may be sanctioned for crossing the border illegally by imprisonment for up to five years and by a fine. When the offence is committed for the first time, the sanction is to be turned into an administrative fine pursuant to article 78a of the Criminal Code. However, a person can be placed in ordinary detention facilities if convicted for the offence a second time. Article 279(5) provides for an exception for persons who apply for asylum under the Constitution (which only provides for asylum to be granted by the president and not for temporary protection on humanitarian grounds).<sup>66</sup> During the visit, the Prosecutor General informed the Commissioner that prosecutors had received instructions to ensure that they apply the non-punishment principle enshrined in Article 31 of the 1951 Geneva Convention, which applies more broadly. As a result, the number of convictions of asylum seekers for irregular crossing of the borders was relatively limited. In November 2013 11 asylum seekers were convicted, while 14 were convicted in December 2013.<sup>67</sup> The Commissioner notes however, that foreign nationals are at risk of being criminalised for crossing the border irregularly and that a number of them have been placed in detention on that account. The Prosecutor General stressed that this situation could only change through amending the legal framework.

## 2.4 INTEGRATION FRAMEWORK

122. The Commissioner is concerned that the system to support the integration of refugees and other beneficiaries of international protection in Bulgarian society still suffers from serious deficiencies, mainly connected with the insufficient funding of the system. As a result, refugees and other beneficiaries of international protection in Bulgaria face serious integration challenges which threaten their enjoyment of social and economic rights, including a serious risk of becoming homeless, high levels of unemployment, no real access to education and problems in accessing health care services. They are also vulnerable to hate crimes.
123. Under the law (Article 32 of the Law on Asylum and Refugees) refugees have rights equal to nationals with only a few exceptions, e.g. to vote or to be elected, to serve in the army, to be appointed in public positions that explicitly require nationality, etc. Humanitarian status holders are provided with the same rights as third country nationals with permanent residence status (Article 36 of the Law on Asylum and Refugees). Access to the social welfare system and labour market is automatic, regardless of status, without the need for any formal authorisation.

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<sup>64</sup> UNHCR, Provisional [Comments](#) and Recommendations on the Draft Amendments to the Law on Asylum and Refugees, 4 December 2013.

<sup>65</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

<sup>66</sup> Pursuant to Article 27(2) of the Constitution, the Republic of Bulgaria shall grant asylum to foreigners persecuted for their opinions or activity in the defence of internationally recognized rights and freedoms.

<sup>67</sup> According to NGOs, only 0.2% (11 cases out of 4041 border applicants) cases of irregular entry resulted in a criminal conviction by a court in 2014. See ECRE, Bulgarian Helsinki Committee, Asylum Information database AIDA, Country [Report](#): Bulgaria, 31 January 2015, p. 18.

124. The Bulgarian authorities started adopting multi-annual programmes for the integration of refugees in 2005. 2011 saw the adoption of a National Strategy on migration, asylum and integration up to 2020. A National Audit of the Action Plan 2011-2013 to implement the National Strategy found that the implementation of the strategy for the integration of refugees in the period 2011-2013 failed to produce any effect.<sup>68</sup>
125. Since then, that Strategy was finally replaced in 2014 by the National Strategy for the Integration of Beneficiaries of International Protection in the Republic of Bulgaria (2014-2020).<sup>69</sup> This strategy introduced the principle of involvement of municipalities and a National Council on Migration and Integration that would be headed by the Deputy Prime Minister for European Policies Coordination and Institutional Affairs and the Minister of Labour and Social Policy. As a consequence, while the SAR would remain a key player in the integration strategy, it will not be the leading institution as before.
126. The Commissioner notes that 2014, which was the year with the highest number of recognised refugees ever, was defined as the “zero integration year” by NGOs monitoring integration measures. The few previously existing measures for integration were discontinued and no new measures were taken during this year.<sup>70</sup> No funds were earmarked for the year 2014 and the strategy was therefore not implemented at all during that year. The Commissioner understands that the situation has not improved as of April 2015. Bulgaria is increasingly seen as a transit country by the authorities who consider that most of the migrants, including asylum seekers, do not wish to stay in the country.
127. In April 2014, UNHCR expressed particular concern that “in the absence of a solid strategy and sustainable programme to ensure access to livelihoods, affordable housing, language acquisition and effective access to formal education for children, beneficiaries of international protection may not have effective access to self-reliance opportunities and thus may be at risk of poverty and homelessness”.<sup>71</sup>
128. As far as access to housing is concerned, several hundred persons who have been recognised as refugees continue to remain in reception centres because they lack the means to live independently. The authorities give the possibility to stay in the open centre even after having been granted refugee status for a period up to six months. As of January 2015, out of 3,675 persons accommodated in reception centres, 850 were recognised refugees (23%). There have been allegations of corruption whereby the staff of the centre are said to extort payments from the families for the right to stay. There have also been reports of “eviction campaigns” by the SAR, pushing recognised refugees, including those in a vulnerable situation, out of the reception centres despite the fact that they were legally entitled to stay and that there was room in the reception centre.<sup>72</sup> Once the six months are over, the persons have to leave and they reportedly have no access to municipal social housing and receive financial aid that is not sufficient to cover the cost of decent accommodation. As a result, many are said to be at risk of homelessness.
129. One of the major concerns in terms of integration is that refugee children do not attend school for various reasons, but mainly because of the strong bureaucracy preventing them from enrolling in schools. While 800 refugee children were in principle registered as being of school age, only 45 of them were enrolled for the year 2014/2015.
130. Another serious concern relates to high level of racism and intolerance in Bulgaria targeting several groups including immigrants, asylum seekers and refugees. The number of hate crimes and incidents of hate speech against migrants rose steeply at the end of 2013. There have been several anti-migrant demonstrations and there were attempts at that time to create “citizen patrols” with the declared aim of exercising self-defence against migrants and asylum seekers. In its 2014 Report on Bulgaria ECRI

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<sup>68</sup> [Novitine](#), 26 January 2014.

<sup>69</sup> Decision 474 of 4 July 2014 of the Council of Ministers of the Republic of Bulgaria.

<sup>70</sup> See Bulgarian Council on Refugees and Migrants, Monitoring [Report](#) on the Integration of Beneficiaries of International Protection in the Republic of Bulgaria in 2014, Sofia, December 2014.

<sup>71</sup> UNHCR, Bulgaria: UNHCR says asylum conditions improved, warns against transfer of vulnerable people, [Briefing Notes](#), 15 April 2014.

<sup>72</sup> See ECRE, Bulgarian Helsinki Committee, Asylum Information database AIDA, Country [Report](#): Bulgaria, 31 January 2015, p. 41.

stressed that racist and intolerant hate speech was escalating, the main target now being refugees, referring to an “explosion of xenophobic hate speech against refugees”. According to ECRI, the authorities rarely voice any counter-hate speech messages to the public. ECRI also noted that hate speech targeting refugees had resulted in actual violence against this group and persons perceived as belonging to this group.<sup>73</sup>

131. There have been several incidents showing hostility against asylum seekers and refugees among the general public. In September 2014, villagers protested against plans to admit 12 refugee children from Afghanistan and Somalia to a local school in Kovatchevtsi. The then Chair of the Agency admitted that these tensions were one of the reasons for closing the reception centre in Kovatchevtsi in November 2014, as mentioned above. In another case, in September 2014, protesting parents, teachers and local authorities prevented nine refugee children from attending school in Kalishte in the province of Pernik. Extremist parties are also said to stir up hatred, notably by denouncing Syrians as “terrorists” and “criminals”.
132. The Commissioner wishes to recall that the Court concluded in a case against Bulgaria concerning a physical assault against a Sudanese national that “when investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person’s ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights. (...)The said obligation also applies where a given type of treatment incompatible with Article 3 (prohibition of torture and inhuman and degrading treatment) is inflicted by a private individual.” In the case at stake, the Court concluded that there had been a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) under its procedural aspect, taken separately and in conjunction with Article 14 (prohibition of discrimination).<sup>74</sup> More generally, the main problems include under-reporting of hate crimes and the fact that hate crimes are treated as “hooliganism” by police and prosecutors rather than as acts based on racism, xenophobia or other forms of intolerance.

## 2.5 CONCLUSIONS AND RECOMMENDATIONS

133. The Commissioner welcomes the measures the Bulgarian authorities have taken with the assistance of several stakeholders from the end of 2013 to help Syrian refugees to face the humanitarian crisis. The Commissioner is well aware that Bulgaria, like other countries with external EU borders, is under strong migration pressure, not least because of the conflict in Syria.
134. The Commissioner regrets however that many Bulgarian politicians are using anti-migrant rhetoric in their discourse and, what is even more problematic, are progressively trying to change the country’s legislation and practice to prevent irregular entries in a manner that impacts negatively on persons seeking asylum.
135. The Commissioner calls on the Bulgarian authorities to take all necessary measures to sustain the improvement in living conditions for asylum seekers in Bulgaria by securing all financial and human resources necessary to provide decent accommodation and food for asylum seekers. The authorities should continue to strengthen reception conditions including by improving access to education for children, and access to medical care. Greater attention should be paid to improving the identification of persons in vulnerable situations and ensuring that they have access to specific support and accommodation adapted to their needs. Legal guardians should be appointed for all unaccompanied children. Free legal aid should be granted in practice at all stages of the asylum procedure.
136. The Commissioner reiterates that any policies and practices impeding the access of persons seeking international protection in Bulgaria, including Syrians, notably collective expulsions at land borders,

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<sup>73</sup> ECRI, [Report](#) on Bulgaria, (fifth monitoring cycle), 16 September 2014.

<sup>74</sup> ECHR, *Abdu v. Bulgaria*, 11 March 2014, (Application No. [26827/08](#)), paragraph 29.

should cease. Non-entry policies and practices actually increase irregular migration and play into the hands of smugglers and traffickers.

137. The Commissioner urges the Bulgarian authorities to ensure strict compliance with the prohibition of refoulement and collective expulsions and to fully respect in practice the right of every person to seek and enjoy asylum, irrespective of the way they reach Bulgarian territory, in full compliance with the obligations assumed under the European Convention on Human Rights and the 1951 Convention Relating to the Status of Refugees. The Bulgarian authorities should adopt a procedural framework to ensure that Bulgarian border police at the border with Turkey have clear instructions on how to handle migration flows in compliance with international human rights and refugee protection standards, which are binding on Bulgaria.
138. Any excessive use of force by law enforcement officials in the context of migration at the border or in detention facilities must be fully and effectively investigated and those found responsible must be adequately sanctioned.
139. Concerning detention, the Commissioner calls on the Bulgarian authorities to give up plans to adopt a law providing for the systematic detention of asylum seekers. Practices such as the detention of persons pending the registration of their asylum claims with the SAR should cease immediately. In addition, the Commissioner stresses that asylum seekers in particularly vulnerable situations should not be kept in immigration detention. The Commissioner draws the authorities' attention to the recently adopted UNHCR Global Strategy on Detention<sup>75</sup>.
140. As to detention for the purpose of removal, the Commissioner calls on the Bulgarian authorities to ensure that detention is only used as a last resort, for the shortest possible period of time and on the basis of individual assessments. Alternatives to detention should be considered first.
141. The Commissioner reiterates that migrant children, including those accompanied by their parents, should not be detained under any circumstances as detention is not in their best interests.
142. The Commissioner calls on the Bulgarian authorities to decriminalise irregular crossing of the Bulgarian border by repealing Article 279 of the Criminal Code. Punishing those who are seeking safety in Europe is not acceptable: the Commissioner recalls that these persons are not criminals and should not be treated as such.
143. The Commissioner urges the Bulgarian authorities to strengthen their efforts to improve the integration and the enjoyment of social and economic rights by recognised refugees and other beneficiaries of international protection. While he notes with interest that the Bulgarian authorities have started to address this issue, he calls on them to ensure that their integration efforts are supported by adequate financial and human resources. He also stresses the need for further efforts to improve the availability of information on the rights of migrants, asylum seekers and refugees in a language they can understand, access to Bulgarian lessons, employment and health care services. All relevant actors including the Commission for the Protection against Discrimination, the National Ombudsman and civil society should be involved in devising and implementing the integration strategy.

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<sup>75</sup> UNHCR, [Beyond Detention](#): A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019, 2014.

144. In recent years, the situation of media freedom in Bulgaria has increasingly been the subject of national and international criticism. The Parliamentary Assembly of the Council of Europe resolved in 2013 to continue the post-monitoring dialogue with the Bulgarian authorities and to closely follow developments in Bulgaria in respect of several issues, including media freedom and transparency of media ownership.<sup>76</sup>
145. The Bulgarian Constitution contains provisions guaranteeing freedom of expression;<sup>77</sup> its Article 40(1) in particular, provides that “the press and other mass information media shall be free and shall not be subjected to censorship.” The 1998 Law on Radio and Television, as amended several times, also includes provisions aimed at guaranteeing media freedom. Lastly, the 2000 Law on Public Access to Information is of particular relevance for investigative journalism. It also contains a provision aimed at guaranteeing the protection of journalistic sources.<sup>78</sup>
146. Despite these legal provisions, media freedom in Bulgaria is currently impeded or threatened by a combination of practices, including those highlighted below. Taken together, these practices create an environment which is conducive to widespread self-censorship among journalists and undue external pressure on media.
147. One aspect of this intricate situation has been described as “[p]olitics, financial capital and mass media remain[ing] entangled in an unhealthy knot within the media servicing of power”.<sup>79</sup> As a result, a reported tendency is that of “media retreat[ing] from their function to inform people, turning instead into a tool for driving the competition and political opponents into a corner.”<sup>80</sup>
148. Another important characteristic of the Bulgarian media landscape is the recent political and economic polarisation of the private media sector, referred to by some commentators as a “media war” between media conglomerates. This media polarisation reportedly mirrors political and economic divisions and competition in the country.
149. It is against this background that the Commissioner wishes to raise a number of concerns relating to media pluralism and media freedom in Bulgaria.

### 3.1 THREATS TO MEDIA PLURALISM

150. Media pluralism is an intrinsic pre-condition for media freedom and genuine democracy. In Bulgaria, the media landscape could seem diverse at first sight: according to the National Statistical Institute, there is a total of 354 newspapers (including 57 daily newspapers). In addition, 87 radio service providers and 114 television service providers are registered. However, a closer look at the media landscape leads to the conclusion that the diversity of the media is lessened by several features which combine to make external pluralism (i.e. the existence of a range of different opinions across the full media landscape) rather more nominal than real. One of these features is the lack of transparency in media ownership and financing combined with strong media concentration.

<sup>76</sup> Parliamentary Assembly of the Council of Europe, [Resolution 1915 \(2013\)](#), 22 January 2013, Post-monitoring dialogue with Bulgaria, item 18.4.2.

<sup>77</sup> See Articles 39, 40 and 41 of the Constitution.

<sup>78</sup> Article 19 of the 2000 Law on Access to Public Information.

<sup>79</sup> Konrad Adenauer Stiftung, *Influence on the media: owners, politicians and advertisers*, Sofia, 2014, p. 74, available at [www.kas.de](http://www.kas.de).

<sup>80</sup> [Interview](#) of Prof. Nelly Ognyanova by Svetla Dimitrova, “Media concentration and media ownership in Bulgaria”, Osservatorio Balcani e Caucaso, 17 October 2014.

### 3.1.1 LACK OF TRANSPARENCY OF MEDIA OWNERSHIP AND FINANCING

151. A number of laws contain provisions for the transparency of media ownership. As concerns the broadcasting media, the 1998 Law on Radio and Television requires that information on media ownership be submitted to the Council for Electronic Media (CEM). As for printed media, the 2010 Law on Mandatory Deposition of Press and Other Works requires the submission of declarations identifying the actual owners of electronic and print media outlets to the Ministry of Culture. Ownership changes should also in principle be reflected in the Commercial Register. There is also the possibility to file requests for information on ownership of mass media on the basis of the 2000 Law on Access to Public Information.<sup>81</sup>
152. In addition, a prohibition introduced by statutory law for offshore companies to hold TV or radio broadcasting licences entered into force in July 2014. The CEM is competent to send requests to clarify the ownership and to supervise the compliance with this prohibition by imposing fines ranging from BGN 50,000 (approx. EUR 25,000) to BGN 100,000 (approx. EUR 50,000).
153. However, the implementation of these legal measures is reportedly patchy and some of these measures were introduced only recently. For instance, data submitted by print media to the Property Register run by the Minister of Culture is reported to be inaccurate and incomplete. As a result, there is a shortage of official, accurate and transparent information about the Bulgarian media market. This concerns media ownership, shares and circulation rates and makes it difficult to trace horizontal and vertical concentration in the media sectors. The Commissioner has received various reports according to which there are cases of offshore, anonymous or nominal media owners in Bulgaria. The transparency of commercial transactions relating to media outlets is also said to be insufficient.
154. Beyond transparency of ownership as such, another essential area where improvement is needed concerns the transparency of funding sources for the media. Even when the owner is known, the origin of the financing can remain obscure.

### 3.1.2 EXCESSIVE CONCENTRATION OF MEDIA OWNERSHIP

155. The Commissioner is concerned at the lack of action against media concentration in Bulgaria. Despite the difficulties in obtaining fully reliable information concerning media ownership as described above, it is generally agreed that the current commercial media landscape in Bulgaria is characterised by the prominence of very few owners who are therefore placed in an oligopolistic situation.
156. Another concentration issue concerns distribution of media and in particular the distribution of newspapers in kiosks, which is reported to be close to a monopoly. Abuse of the distribution monopoly reportedly contributes to threatening media pluralism in Bulgaria.
157. Media concentration is currently covered by the general rules on market competition laid down in the Law on Protection of Competition. The current legislation does not foresee any specific rules governing the media market that would take into account the need for media pluralism. The body competent to deal with this issue is the Commission for the Protection of Competition. One of the concerns raised with the Commissioner in this respect was that this body was not in a position to overcome the lack of transparency of ownership of media and therefore to take effective action against excessive media concentration.

### 3.1.3 CONCLUSIONS AND RECOMMENDATIONS

158. The Commissioner is concerned at the apparent lack of genuine media pluralism in Bulgaria. He recalls that media pluralism is the institutional guarantee for the fulfilment of the right to receive and impart information and that the Bulgarian authorities should take action to secure it. The Court and the UN Committee on Human Rights have highlighted the role of the state as ultimate guarantor of the principle

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<sup>81</sup> See Articles 18 and 19 of the Law on Access to Public Information.

of pluralism and its responsibility for encouraging a diverse media.<sup>82</sup> The numerous signals that the media pluralism situation has worsened recently call for an immediate reaction from the Bulgarian authorities who should show strong political will to effect change and move beyond acknowledging that there is a problem, or just announcing media legislation reforms. The Commissioner therefore urges the Bulgarian authorities to take action to foster genuine media pluralism. He draws attention to the relevant work of the Council of Europe bodies on media pluralism and strongly encourages the authorities to make use of this asset and the expertise of the relevant committees.<sup>83</sup>

159. In particular, the Commissioner is concerned at the insufficient transparency of media ownership and financing in Bulgaria, which has reportedly resulted in a media landscape characterised by many outlets serving few interests. The Commissioner recalls the importance of transparency of media ownership to monitor media pluralism. It is the only way to ensure that authorities in charge of the implementation of regulations concerning media pluralism can take informed decisions, and that the public can make its own analysis of the information, ideas and opinions expressed by the media.<sup>84</sup>
160. The Bulgarian authorities should consider establishing an independent and efficient mechanism for the monitoring of ownership of media (both press and broadcast) with a particular emphasis on audience share ownership and ownership of multiple media (cross-media ownership). Attention should also be paid to monitoring the financing of the media. In a recent Resolution on media freedom, the Parliamentary Assembly proposed to publicise a “Media Identity Card” which should, *inter alia*, provide information about the owners of a media outlet and those who contribute substantially to its income, such as big advertisers or donors.<sup>85</sup> The Commissioner also draws attention to the useful guidelines on monitoring media ownership stemming from the Council of Europe Committee of Ministers’ Recommendation on media pluralism and diversity of media content.<sup>86</sup>
161. Concerning media concentration, the Commissioner stresses that media are more than just a market.<sup>87</sup> The Commissioner recommends that the Bulgarian authorities consider, in consultation with media freedom specialists and representatives of media professionals, the adoption of rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets, both in the capital and in the regions, taking into account the different characteristics of media. As recommended by the Council of Europe Committee of Ministers, these rules may include introducing thresholds based on objective criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights.<sup>88</sup>
162. The Bulgarian authorities should envisage establishing or designating an independent authority responsible for the application of ownership and concentration rules that would be bound to take into account the specificities of the media market and the need to ensure media freedom, pluralism and independence. Such an authority should be vested with the powers required to accomplish its mission, and in particular, the power to act against concentration of all types and the capacity to impose sanctions if need be.

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<sup>82</sup> According to the European Court of Human Rights, the state is the “ultimate guarantor of the principle of pluralism”. See ECtHR, 24 November 1993, Informationsverein Lentia and others v. Austria, Application No. [13914/88](#); 15041/89; 15717/89; 15779/89; [17207/90](#), paragraph 38. According to the Committee of Human Rights, “States parties should take particular care to encourage an independent and diverse media”. See General Comment No. 34 on Article 19: freedom of opinion and expression, [CCPR/C/GC/34](#), paragraph 14.

<sup>83</sup> See the Council of Europe [webpage](#) on freedom of expression and media.

<sup>84</sup> Recommendation [CM/Rec\(2007\)2](#), of the Committee of Ministers to member states on media pluralism and diversity of media content. See also Recommendation [CM/Rec\(2011\)7](#) of the Committee of Ministers to member states on a new notion of media, paragraphs 79-80.

<sup>85</sup> Parliamentary Assembly [Resolution](#) 2035 (2015) on Protection of the safety of journalists and of media freedom in Europe, 29 January 2015, § 16.

<sup>86</sup> Committee of Ministers of the Council of Europe, Recommendation [CM/Rec\(2007\)2](#) to member states on media pluralism and diversity of media content, paragraph III.1

<sup>87</sup> See [Human Rights and a Changing Media Landscape](#), 2011, Office of the Commissioner for Human Rights, p. 124.

<sup>88</sup> Recommendation [CM/Rec\(2007\)2](#), of the Committee of Ministers to member states on media pluralism and diversity of media content, paragraph I.2.3

### 3.2 POLITICAL AND ECONOMIC INTERFERENCE IN THE MEDIA

163. The Commissioner is concerned at research indicating that only a small number of Bulgarian media outlets are regarded as free from political and business influence. According to a survey, 59% of Bulgarian respondents did not consider the media to be independent in 2014, indicating a continuation of the confidence crisis in media communication revealed in 2013.<sup>89</sup> This lack of trust concerns mainly print media and online media and less the television channels, with TV being generally considered as one of the most trustworthy media in Bulgaria.
164. Worryingly, this general perception about a lack of independence from political and economic pressure is confirmed by numerous credible reports received by the Commissioner during his visit. The main criticism voiced was about several media outlets adapting their editorial approach each time the government changes to depict the government in place under a favourable light regardless of its actions.

#### 3.2.1 REVENUES FROM ADVERTISEMENT AND PUBLIC INFORMATION CONTRACTS

165. With the financial crisis severely hitting the Bulgarian media sector and the printed media experiencing a decrease in circulation and subscription, the current main revenues of many private-owned media are very limited. As a result, media are said to have become highly dependent on revenues from advertisement, either from private or public sources. Local and regional media are reported to be particularly exposed to political and economic pressure.
166. The Commissioner was informed that media outlets heavily depend on advertising revenues from the government and local authorities, the largest advertisers in the country. It is alleged that often the government and sometimes local authorities exert influence on the editorial content of media to their advantage through the attribution of advertisements and information contracts. Several commentators highlighted the not uncommon situation where, after having received government funding, media outlets have stopped publishing critical opinions about the work of the government.
167. A particular feature of political interference reportedly relates to the way the government decides on how funds for communicating on EU operational programmes and various public projects open to procurement procedures are distributed among media companies.<sup>90</sup> Many of the Commissioner's interlocutors have pointed out that in practice only government-friendly media benefit from this crucial source of revenue.
168. As concerns pressure from the business sector, the Commissioner was informed that some private companies pose undue conditions for advertising in the media. In some cases they would go as far as requiring that publishing or broadcasting materials would present them in a favourable light, that complaints of their clients would not be publicised, or even that their competitors be criticised in the media concerned.

#### 3.2.2 LACK OF FINANCIAL INDEPENDENCE OF PUBLIC SERVICE MEDIA

169. While it is generally admitted that the problem of lack of independence is less acute for public service media than for the privately owned outlets, the system of financing public broadcasters (TV and radio) is reported to keep them potentially dependent upon political pressures. The main source of funding is the state budget subsidy. The budget of the BNT was reduced from BGN 70.13 million in 2013 to BGN 65.15 million in 2014, raising protests among media representatives. According to some observers, this budget

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<sup>89</sup> Konrad Adenauer Stiftung, Media Program South East, Christian Spahr, Bulgarians feel badly informed by media and politicians, Representative survey on behalf of the KAS shows crisis of confidence in media and political communication, February 2015, available at [www.kas.de](http://www.kas.de).

<sup>90</sup> According to a 2014 report, in the 2007–2013 period, the government distributed funds for promoting EU operational programmes as follows: more than BGN 19 million (approx. EUR 10 million) for television content, more than BGN 10 million (approx. EUR 5 million) for radio advertisements, more than BGN 7 million (approx. EUR 3.5 million) for advertisements in the press, and more than BGN 800 000 (approx. EUR 400 000) for internet advertisements. Friedrich-Ebert-Stiftung, Office Bulgaria, Balkan Media Barometer, [Report](#), 2014, p. 43.

cut of almost BGN 5 million (approx. EUR 2.5 million), was a form of political pressure on the independence of the public broadcaster connected to its coverage of the anti-government protests in the summer of 2013.<sup>91</sup>

170. The 1998 Law on Radio and Television provides for the establishment of a Radio and Television Fund, which would ensure a more transparent and independent way of obtaining financial resources, but this fund has never been set up.

### 3.2.3 HIDDEN POLITICAL ADVERTISING IN THE MEDIA

171. Another reported means through which political interference is exercised relates to paid political advertisement not always clearly labelled as such in the media, particularly the print and online media. The way the media report is presented gives the false impression that it is the result of journalistic editorial work while it is in fact an advertisement for the party that pays for it and drafts it. This practice is said to occur both during and outside political campaigns and according to some observers it could be noted in the two most recent electoral campaigns (for the March 2014 European Parliament elections and the October 2014 Bulgarian Parliamentary elections).
172. An aggravating factor is that paid political advertising dominates media content in comparison with non-paid material.<sup>92</sup> This means that there is insufficient editorial coverage of campaign activities of political candidates and lack of genuine political debate, which impinges on the possibility of voters and audiences to make an informed choice when voting.
173. The new Electoral Code adopted in March 2014 introduced provisions which were considered by electoral supervision experts as improving the situation in some respects. In particular, Article 179 of the amended Electoral Code obliges all broadcasters to separate paid content from editorial and news reporting and to clearly mark it as such. Article 180 obliges media outlets to publish the terms of contracts signed with political parties with regard to coverage of political elections. The CEM, which is responsible for supervising the electoral campaigns in the broadcast media, reported an increasing trend in 2014 towards more clearly distinguishing between paid and unpaid electoral content. However, practice has shown that further improvements are needed, including more detailed information on contracts published by media under Article 180.

### 3.2.4 CONCLUSIONS AND RECOMMENDATIONS

174. The Commissioner is concerned at reports of lack of independence of Bulgarian media from economic and political pressure. In particular, advertisement revenues are reportedly being misused by external entities such as private companies or public authorities to exert influence on the editorial content of media outlets. Regrettably, this situation is said to lead to self-censorship and biased media reports to please the provider of funds.
175. The Commissioner calls on the Bulgarian authorities to be more transparent in the allocation of public advertising revenues. He encourages the authorities to find, in consultation with representatives of media professionals, solutions for ensuring that any form of public funding, including for communicating on EU operational programmes, be distributed among media in a transparent and non-discriminatory manner using objective criteria.
176. As public service broadcasting is an important element in a democratic society for providing the public at large “with unbiased information and culture in an increasingly commercialised, economically weakened and politically controlled media landscape”,<sup>93</sup> the Commissioner encourages the Bulgarian

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<sup>91</sup> Friedrich-Ebert-Stiftung, Office Bulgaria, Balkan Media Barometer, [Bulgaria](#) 2014, p. 59.

<sup>92</sup> According to the OSCE/ODIHR Limited Election Observation Mission, on average in the print media, paid advertisement amounts to over 80% of the political coverage. What is more, 90% of paid advertisements are made of paid reports as opposed to mere advertisement under the parties’ banners. See OSCE, Early Parliamentary Elections, 5 October 2014, OSCE/ODIHR Limited Election Observation Mission, [Final Report](#), Warsaw, 7 January 2015, p. 15.

<sup>93</sup> Parliamentary Assembly [Resolution](#) 2035 (2015) on Protection of the safety of journalists and of media freedom in Europe, 29 January 2015, § 17.

authorities to establish transparent ways of financing their activities and refers them to the Parliamentary Assembly's Recommendation 1878 (2009) on the funding of public service broadcasting.<sup>94</sup>

177. As far as political advertising is concerned, the Commissioner considers that it is essential that voters receive unbiased media information on political parties' campaigns and activities and calls on the Bulgarian authorities to continue their efforts in improving the situation in this respect.

### 3.3 OTHER THREATS TO MEDIA FREEDOM

#### 3.3.1 SANCTIONS ON THE MEDIA RELATED TO REPORTING ON THE BANKING AND FINANCIAL SECTORS

178. The Commissioner is concerned at numerous alerts regarding sanctions imposed on media and other actions targeting them in relation to their reporting on the banking and financial sectors.<sup>95</sup>
179. A first source of serious concern relates to the high fines imposed in January 2015 on several media outlets following the banking crisis of June 2014 by the Financial Supervision Commission (FSC), established to supervise the non-banking financial sector. These fines have triggered very strong criticism both at the national and international levels. Numerous sources have expressed their concerns as to the disproportionate character of these fines, particularly in view of the low budget of the media outlets fined. In particular, the OSCE Representative on Freedom of the Media, Dunja Mijatović, raised concern over "large fines imposed on newspapers in Bulgaria for publishing news stories on companies' financial activities and the banking sector".<sup>96</sup>
180. The Commissioner understands that according to the FSC these fines were handed down on three media companies/journalists for market manipulation pursuant to the 2006 Law on Measures against Market Abuse with Financial Instruments. Article 6(1)-3) of this law prohibits manipulation of the financial market through "dissemination through the media of information which gives, or is likely to give, false or misleading idea as to financial instruments, including the dissemination of rumours and false or misleading news".
181. The Commissioner notes that in one of these cases the amount of the fine imposed on a single media outlet corresponds to the highest possible fine that can be enforced under the Law, that is BNG 100,000 (approx. EUR 50,000). He understands that all these fines are currently being challenged before courts.
182. Without encroaching on the regulatory role of the FSC and commenting on individual cases, the Commissioner notes that the law on market abuse itself provides for a number of safeguards. It requires that the person who made the dissemination knew, or ought to have known that the information was false or misleading. What is more, it also provides for an additional and specific safeguard for journalists. Article 6(5) provides that "in case the information is disseminated by a journalist, when he/she acts in their professional capacity, the rules governing their profession shall be taken into account, unless a journalist derives, directly or indirectly, a benefit from the information dissemination". In addition, the EU Directive 2003/6/EC (which the said Law aims to transpose), requires a prohibition of market manipulation, but expressly provides that it is not intended to encroach upon media freedom.<sup>97</sup>

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<sup>94</sup> Parliamentary Assembly, [Recommendation 1878 \(2009\)](#) on the funding of public service broadcasting.

<sup>95</sup> See the Council of Europe's [Platform to promote the protection of journalism and safety of journalists](#), "Bulgarian Financial Supervision Commission tries to silence newspapers working on banking disclosures", available at <http://www.coe.int/en/web/media-freedom>.

<sup>96</sup> OSCE Representative on Freedom of the Media, Dunja Mijatović, "Large fines imposed on media outlets in Bulgaria may lead to censorship in reporting on issues of public interest, says Mijatović", [Press Communiqué](#), 4 February 2015.

<sup>97</sup> See paragraph 44 of the Preamble and Article 1 paragraph 2, c of [Directive 2003/6/EC](#) of 28 January 2003 on insider dealing and market manipulation (market abuse). The new [Directive 2014/57/EU](#) of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) to be transposed by 2016 and adopted to replace the 2003 Directive also makes it clear that media freedom should be respected when dealing with market abuses in paragraph 28 of its preamble : "(...) Nothing in this Directive is intended to restrict the freedom of press or the freedom of expression in the media in so far as it is guaranteed in the Union and in the Member States, in particular under Article 11 of the Charter and other relevant provisions."

183. A second issue relates to the attempt by the Bulgarian National Bank to introduce a criminal legislative provision providing for imprisonment for disseminating information causing panic concerning the banking sector. The Bulgarian National Bank whose tasks include the supervision of the banking sector and which has the competence to introduce legislative proposals did so in June 2014, in the aftermath of a bank crisis. The text of the proposal as initially brought to the Parliament was particularly worrying in terms of freedom of expression for being far too vague. It is only thanks to a strong public and media reaction that the text was changed before entering the second reading. The revised text referred to the dissemination of “false” banking information and while the potential fines were increased, the possibility of imprisonment was removed. The Commissioner notes that this draft was dropped as a consequence of the anticipated elections in October 2014.
184. The Commissioner also notes the criticism that was expressed in 2012 about an attempt by some banks to obtain from the Bulgarian National Bank’s supervisory department that it impose fines against a media outlet, this time on the basis of Article 152a of the Law for Credit Institutions. This Act prohibits the “dissemination of false information and circumstances about a bank, which undermines the bank’s reputation and credibility”.<sup>98</sup>
185. The Commissioner therefore considers that there are several problematic practices in Bulgaria which appear to obstruct the media coverage of the financial and banking sectors. These practices need to be addressed in an urgent manner by the Bulgarian authorities as they are conducive to self-censorship by the media on a subject of clear public interest.
186. The Commissioner is aware that the issue of banking crises, including the one that occurred mid-2014, is a sensitive topic in Bulgaria. One of the reasons put forward to explain this is the painful reminiscence of the serious bank crisis and bank runs experienced by Bulgaria in the 1990s. It is against this background that the Commissioner wishes to refer to two judgments of the Court which, albeit different from the cases under discussion, give some indications as to the requirements to be fulfilled to ensure the respect of the ECHR in the field of media coverage of banking and financial sectors.
187. Firstly, in a case concerning the application of Article 1 of Protocol No. 1 (protection of property) to fines imposed on individuals (who were not media professionals) by a financial regulatory body, the Court observed that the prohibition on disseminating false or misleading information with regard to financial instruments was intended to guarantee the integrity of the financial markets and to maintain public confidence in the security of transactions, which undeniably amounted to an aim that was in the public interest. However, the Court also stressed that the fines had to be proportionate to that aim and in particular that the burden placed on the person fined should not be excessive or exorbitant.<sup>99</sup> It also made clear that the requirements of Article 6 (right to a fair trial) had to be respected throughout the procedure imposing sanctions and its judicial review.<sup>100</sup>
188. Secondly, in another case concerning defamation and the compensation to be paid by a newspaper for the disclosure in the media of the name of a bank manager under prosecution for embezzlement, the Court concluded that there had been a violation of Article 10 as the impugned press article “focused on the extent to which politics and banking were intertwined and on the political and economic responsibility of the Bank’s enormous losses”. The Court concluded that the sanction was therefore not necessary in a democratic society.<sup>101</sup>
189. In the particular case of the sanctions imposed by FSC, it is important to note that the entities sanctioned or threatened to be sanctioned were all media outlets or journalists for articles they have published, which means that the public interest of guaranteeing the integrity of the financial markets

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<sup>98</sup> Reporters Sans Frontières, Un site d’information victime de pressions pour des enquêtes sur le secteur bancaire, [article](#) of 24 October 2012.

<sup>99</sup> ECtHR, Grande Stevens and others v. Italy, Applications No. [18640/10](#), [18647/10](#), [18663/10](#), [18668/10](#) and [18698/10](#), paragraphs 194-196.

<sup>100</sup> Ibid.

<sup>101</sup> See ECtHR, Standard Verlags GmbH v. Austria (No. 3), 10 January 2012, Application No. [34702/07](#), 10 January 2012, paragraph 44.

and maintaining public confidence in the security of the transactions has to be counterbalanced with the watchdog role of media and the public interest of reporting on banking activities.

### 3.3.2 PROTECTION OF JOURNALISTS' SOURCES

190. Another issue relating to the imposition of fines on media outlets by the Financial Supervision Commission relates to the protection of journalists' sources. According to the FSC, the latter asked the media outlets concerned to reveal their sources, while at the same time acknowledging that they were not under an obligation to do so. It is nevertheless reported that the FSC initially threatened to impose a fine in case of non-disclosure, and that it finally fined some of the media outlets in question for having refused to communicate their sources, considering this as a refusal to co-operate. During the proceedings, a response was submitted to the Financial Supervisory Commission referring explicitly to the protection of sources as guaranteed under Article 10 of the European Convention of Human Rights but the fines were imposed nonetheless. The persons even before being fined also brought the case to the Supreme Administrative Court on that question of law, but it was found inadmissible on the grounds that the court reviewing the lawfulness of the fine once imposed would be in charge.
191. The Commissioner also received allegations in other cases of attempts by prosecutors to press journalists to disclose their sources, including for an investigative report into alleged wrongdoing by prosecutors.

### 3.3.3 ATTACKS ON JOURNALISTS

192. A number of attacks against journalists have been reported in recent years. One of the most recent incidents concerned the arson attack against the car of a TV journalist in September 2013. While the investigations into this incident have not yet been finalised to the Commissioner's knowledge, her company car was also set alight in April 2014.<sup>102</sup> In July 2012, a journalist for a newspaper in the city of Varna received a postal threat related to his reports about alleged corruption in a local construction project. In 2013 another investigative journalist, whose work focuses on the secret files and alleged crimes of the former Communist State Security Agency, received several threats to his life and safety, which he reported to police.<sup>103</sup>
193. The Commissioner also received several allegations of cases of police violence which took place in the framework of the public protests in 2013.
194. The response of the Bulgarian authorities to these allegations of attacks against journalists on the one hand and police violence on the other has not been adequate as investigations have not yet yielded any convictions. The Commissioner notes that Freedom House concluded in 2014 that impunity for crimes against journalists remains the norm, encouraging self-censorship.<sup>104</sup>

### 3.3.4 THE NEED TO DECRIMINALISE DEFAMATION

195. In Bulgaria, defamation remains a criminal offence despite the fact that in 2000, the sanction of imprisonment was changed into criminal fines and public censure.<sup>105</sup> Article 146 of the Criminal Code on libel or insult punishes the offence of saying or doing something degrading to the honour and dignity of another in that person's presence. Article 147 of the Criminal Code prohibits the offence of defamation, i.e. dissemination of an injurious statement of fact about another person or imputing an offence to them.

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<sup>102</sup> See the [article](#) by the Commissioner for Human Rights of the Council of Europe, Stopping the deterioration of press freedom, published in New Europe online, 4 January 2015,

<sup>103</sup> See the Parliamentary Assembly [Report](#) on Protection of Media Freedom in Europe, 12 January 2015, (Doc. 13664), paragraph 167.

<sup>104</sup> According to Freedom House 2014 [index](#) on freedom of the press.

<sup>105</sup> On defamation legislation and its application in Bulgaria see in particular International Press Institute, Out of Balance, Defamation law in the European Union and its effect on press freedom, IPI, July 2014.

196. Both offences are punishable by fines and public censure. Fines for libel can range from BGN 1,000 to 3,000 (approx. EUR 500 to 1,500) and fines for defamation from BGN 3,000 to 7,000 (approx. EUR 1,500 to 3,500). Higher fines are foreseen when the offences are committed publicly or via the print media. The sanction is also increased when the offences are committed against a public official or by a public official during or in connection with his/her duties.<sup>106</sup> These offences are under the regime of private prosecution and the person complaining is allowed to apply for civil law damages in addition to criminal fines.
197. Pursuant to Article 78a of the Criminal Code, these criminal fines are to be changed into administrative fines ranging from BGN 500 to 1,000 (EUR 250 to 500) and the prohibition to pursue a profession, but only when the perpetrator meets certain conditions such as having no previous criminal record.
198. It has been reported to the Commissioner that in general, the Bulgarian courts apply the Court's case law when deciding on defamation cases and do not sanction journalists or other persons brought before them too heavily. However, in two recent judgments, the Court concluded that there was a disproportionate interference with the freedom of expression of the applicants, two journalists, as a result of their criminal or civil convictions in 2003 and 2004 for defamation of public servants or a former employee of the Ministry of Internal Affairs (violations of Article 10).<sup>107</sup> In addition, an important problem is that public figures reportedly keep bringing journalists to court and asking for disproportionate damages for insult or defamation, a factor that has a chilling effect on journalistic work even if the complainants do not necessarily obtain satisfaction from the courts.
199. In 2013, the Parliamentary Assembly of the Council of Europe recommended that Bulgaria "ensure that defamation and libel are not criminalised in the new penal code under preparation".<sup>108</sup>

### 3.3.5 SHORTCOMINGS IN SELF-REGULATION AND OTHER FORMS OF REGULATION

200. Lack of efficient self-regulation of the media has frequently been presented to the Commissioner as a factor contributing to the lack of media freedom in Bulgaria. The Commissioner agrees that media self-regulation helps journalists and other media professionals to resist external influences and to ensure a better quality of information.
201. Currently, two alternative Codes of Ethics coexist in Bulgaria: the Ethical Code of the Bulgarian media adopted in 2004; and the Professional Code of Ethics of the Bulgarian Media adopted in 2014. While the content of the two codes are reported not to differ significantly, the ethical standards are split according to the interests of different media groups, reflecting in a way the division lines of the Bulgarian media landscape described above.
202. Various reports stress that, regardless of ethical commitments taken or not, self-regulation has remained ineffective so far. It should also be noted that there is a tendency for journalists not to trust professional and trades unions of journalists and increasingly look for support and protection directly from the NGO community. In general, the status and social rights of journalists are rather weakly protected. They receive low salaries and work in an increasingly precarious context which makes them vulnerable to pressure, including corruption as a means to survive. Even the media that have signed any of the two existing codes are said to often violate their content. In addition, a considerable number of media fall outside the scope of both legal and self-regulation because they have signed no code at all.
203. The Council for Electronic Media (CEM) is an independent administrative body composed of five members, of whom three shall be elected by the National Assembly and two are appointed by the Bulgarian President. The CEM is competent for supervising and regulating private and public broadcast media. It is in particular empowered to deal with complaints, issue warnings and impose fines on media service providers for incitement to racial hatred or violation of the rules on the protection of minors.

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<sup>106</sup> See Article 148-1 and 148-2 CC.

<sup>107</sup> ECtHR, *Kasabova v. Bulgaria*, Application No. [22385/03](#), and *Bozhkov v. Bulgaria*, Application No. [3316/04](#), 11 April 2011.

<sup>108</sup> Parliamentary Assembly of the Council of Europe, [Resolution 1915 \(2013\)](#), 22 January 2013, Post-monitoring dialogue with Bulgaria, item 18.4.2.

204. The National Journalism Ethics Commission was created to supervise the enforcement of the 2004 Ethical Code of the Bulgarian Media. This body was recently revived, as it did not really function before, and the main changes brought in 2015 consist in new members being appointed and merging the two sub-commissions (one on print media and another on broadcast media) into a single one competent to deal with complaints against the two types of media as this was found to be more adapted to the current media landscape and self-regulatory practices in Bulgaria.

### 3.3.6 CONCLUSIONS AND RECOMMENDATIONS

205. The Commissioner wishes to stress that in a democratic society, media must be able to play fully their role of watchdog. As stressed by the Council of Europe Committee of Ministers, “[m]edia facilitate the scrutiny of public and political affairs and private or business-related matters, thereby increasing transparency and accountability.”<sup>109</sup> Against this background, the Commissioner underlines that the high fines recently imposed by the Financial Supervisory Commission on media outlets and a journalist are very disturbing. In a context already characterised by limited space for free reporting in the public interest, these fines clearly induce further self-censorship.
206. The Commissioner recalls that, in the cases where media and journalists are subject to general legal provisions (namely those that are not specific to the media, whether civil, commercial, corporate, tax or penal law), extra care should be exerted by the regulatory bodies when dealing with media. As recommended by the Committee of Ministers, “given media’s needs and role in society, certain general provisions may need to be interpreted specifically for the media (for example in respect of defamation, surveillance, stop and search, state secrets or corporate confidentiality) or their application be scrutinised to avoid their misuse to covertly impinge on media freedom.”<sup>110</sup> This general principle certainly applies to the case of sanctions for market manipulation.
207. The Commissioner underlines that, as a form of interference, any regulatory procedure launched with the aim of imposing sanctions upon media should itself comply with the requirements set out in Article 10 of the ECHR and the standards that stem from the relevant case law of the Court. In particular, regulatory measures should respond to a pressing social need and, having regard to their tangible impact, be proportional to the aim pursued. Such procedures should also respect the principles and procedural safeguards resulting from other provisions of the ECHR, in particular Article 6 (right to a fair trial) of the Convention, and Article 1 of its Protocol No. 1 (protection of property).
208. The Commissioner recalls the Court’s case-law, underlining the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom. The Court has already considered that a disclosure order imposed on journalists requiring them to reveal the identity of their sources cannot be compatible with Article 10 of the Convention unless there is a reasonable relationship of proportionality between the legitimate aim pursued by the disclosure order and the means deployed to achieve that aim.<sup>111</sup> Public authorities must not demand the disclosure of information identifying a source unless the requirements of Article 10, paragraph 2, of the Convention are met and unless it can be convincingly established that reasonable alternative measures to disclosure do not exist or have been exhausted, the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, and an overriding requirement of the need for disclosure is proved.<sup>112</sup>

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<sup>109</sup> Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, paragraph 58 Paragraph 1.

<sup>110</sup> Ibid. Recommendation [CM/Rec\(2011\)7](#) of the Committee of Ministers to member states on a new notion of media, paragraph 58.

<sup>111</sup> ECtHR, *Goodwin v. the United Kingdom*, 27 March 1996, Application No. 17488/90, paragraph 39. See also what the Court concluded in another case: “The Court, accordingly, finds that, as in the *Goodwin* case, *Interbrew’s* interests in eliminating, by proceedings against X, the threat of damage through future dissemination of confidential information and in obtaining damages for past breaches of confidence were, even if considered cumulatively, insufficient to outweigh the public interest in the protection of journalists’ sources (...) In conclusion, the Court finds that there has been a violation of Article 10 of the Convention.” ECtHR, *Financial Times Ltd and Others v. the United Kingdom*, 15 December 2009, Application No. 821/03, paragraph 71.

<sup>112</sup> See Parliamentary Assembly Recommendation 1950 (2011) on the protection of journalists’ sources.

209. The Commissioner therefore urges the Bulgarian authorities to review their current legislation and practice so as to reinforce the protection of journalistic sources, notably by reinforcing the legal framework of protection of sources and training the relevant officials on the importance of the protection of journalistic sources for democracy and media freedom.<sup>113</sup>
210. The Commissioner recalls that, as the Court made clear,<sup>114</sup> states have a positive obligation to create a favourable environment for journalists to express their opinions without fear, no matter how uncomfortable those opinions may sometimes be to those with economic, cultural or political power. The Bulgarian authorities should signal very strongly that attacks on journalists are unacceptable and will not go unpunished. They should initiate prompt, thorough and transparent investigations and bring perpetrators to justice, where punishments should reflect the seriousness of this crime. If journalists have been threatened, the authorities should act quickly to protect them. The effective investigation of such attacks requires that any possible link to journalistic activities be duly taken into account in a transparent manner.<sup>115</sup>
211. The Commissioner notes that the Bulgarian authorities have not yet fully decriminalised defamation. The remaining criminal law provisions, even if they do not provide for prison sanctions, send a negative signal to investigative journalists and might prevent the expression of critical or satirical views. The Commissioner encourages the Bulgarian authorities to consider repealing all criminal provisions against defamation and to deal with it through strictly proportional civil sanctions only.
212. Lastly, as a possible contribution to finding solutions to the above-mentioned threats to media freedom, the Commissioner strongly encourages the Bulgarian authorities to engage in a dialogue with media professionals and civil society on how best to guarantee the efficiency of media self-regulation and regulation by the CEM. This could also help to prevent possible encroachment upon media freedom on the part of regulatory bodies operating in fields not specifically related to the media by raising their awareness of the human rights protection framework applicable to media work.

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<sup>113</sup> See also the factsheet on the ECtHR case law on protection of journalistic sources.

<sup>114</sup> ECtHR, *Dink v. Turkey*, 14 September 2010, Applications No. 2668/07, 6102/08, 30079/08, 7072/09 et 7124/09, paragraph 137.

<sup>115</sup> See the Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, paragraph 58 Paragraph 1.