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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Post-monitoring dialogue with Bulgaria

Comments by the delegation of Bulgaria to the Parliamentary Assembly on the information note on the fact-finding visit to Sofia by the Chair of the Committee (5-7 November 2008) [AS/Mon(2008)35][1]

Rapporteur: Mr Serhiy HOLOVATY, Alliance of Liberals and Democrats for Europe

[1] These comments have been made public by decision of the Monitoring Committee dated 31 March 2009.

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REPUBLIC OF BULGARIA
NATIONAL ASSEMBLY

VICE-PRESIDENT

CHAIRMAN OF THE BULGARIAN DELEGATION TO P A C E
VICE-CHAIR OF P A C E

26 February 2009

Dear Mr Holovaty,

Enclosed please find the replies of the Bulgarian authorities to the Information note prepared following your visit to this country from 5 to 7 November 2008 in the framework of the post-monitoring dialogue with Bulgaria.

Sincerely yours,

Younal LOUTFI

Mr Serhiy Holovaty
Chairperson
Committee on the Honouring of Obligations
and Commitments by Member States
Council of Europe Parliamentary Assembly

Ministry of Foreign Affairs

Comments on paragraph 38 of the Information note:

Improvement of the situation of Roma in Bulgaria is among the foremost priorities of the Government, which consistently takes measures to this end, in co-operation and with the active involvement of the Roma community.

A number of **strategic documents** have been developed and are implemented: *a Framework Programme for Equal Integration of Roma in Bulgarian Society (1999), a National Action Plan for Further Implementation of the Framework Programme (2003-2004), a National Action Plan for the Decade of Roma Inclusion (2005-2015), a Health Strategy for Disadvantaged Members of Ethnic Minorities, a ten-year National Programme for Improvement of the Living Conditions of Roma* etc.

Along with the measures of a legislative nature: the adoption of the Protection against Discrimination Act and the Ombudsman Act (effective 1 January 2004), additional resources have been allocated from the executive budget in support of the programmes in the spheres of education, culture, living conditions, employment, social protection etc.

The principal problems of the Roma community in Bulgaria are still **mainly in the socio-economic sphere**. In the first place, such a problem is **unemployment**, which is largely due to a lack of education and proper professional qualification. Within this context, the Government (and in particular the Ministry of Labour and Social Policy) is implementing comprehensive measures intended to overcome the social exclusion of the Roma and to reintegrate them into the labour market through training, job creation and promotion of entrepreneurship. A *National Strategy for the Fight against Poverty and Social Exclusion, a National Programme "From Social Welfare to Employment", a National Programme for Temporary Employment, a Programme for Temporary Employment during the Winter Season* etc. are under implementation.

In the sphere of **education**, a comprehensive *Concept of Integration of Children and Students Belonging to Ethnic Minorities into the Education System* has been developed, with a special focus on the children of Roma origin. A *Strategy Ensuring Equal Integration of Children and Students from Ethnic Minorities into the Education System,* a *National Programme for Further Integration of School-Age Children and an Action Plan* for its implementation have been adopted. A *Centre for Educational Integration of Children and Students from Ethnic Minorities* has been set up.

A *Consultative Council on Educational Integration of Children and Students from Ethnic Minorities* functions with the Ministry of Education and Science and develops concrete measures to encourage the integration of Roma students with their peers.

In the part on **living conditions**, a long-term *National Programme for Improvement of the Living Conditions of Roma in Bulgaria*, covering the period ending in 2015, was adopted in March 2006. There are plans to build thousands of new residential units and to redevelop thousands of others. The implementation of the Programme is expected to lead to an improvement of the living conditions of some 85,000 households in 88 cities and towns countrywide.

The possibilities to legalise - where possible - unlawfully constructed residential units are considered.

In the sphere of **health care**, the Government adopted an express *Health Strategy for Disadvantaged Members of Ethnic Minorities*, complete with an Action Plan for its implementation, which is updated annually. The Ministry of Health finances the repair and furnishing of medical practices for general practitioners in Roma neighbourhoods, as well as projects for educational and medical integration of the so-called vulnerable groups, including the Roma. National and regional programmes for health education are elaborated, and seminar training of Roma leaders is organised.

In the sphere of **culture**, the effort is shared with the Public Council on Roma Integration. Public councils with similar tasks function in the larger cities as well. Events related to authentic Roma folklore are supported.

The principal body that co-ordinates and monitors the implementation of the measures developed by the Government for equal integration of Roma in society is the National Council for Co-operation on Ethnic and Demographic Issues with the Council of Ministers, under which an express Commission on Roma Integration functions.

Comments on paragraph 39 of the Information note:

Bulgaria adheres to the principle that the affiliation of a person to one group or another is determined by the freely expressed own will of the person concerned.

Accordingly, the existence of Bulgarian citizens who identify themselves as “Macedonians” has been duly recorded in the official results of the population census: a total of 5,017 by 1 March 2001. The data are in the public domain. This objective fact does not need any additional act of “recognition” whatsoever on the part of the Bulgarian authorities.

In Bulgaria the persons belonging to religious, linguistic or ethnic groups, including those who identify themselves as “Macedonians”, are guaranteed all rights and freedoms enjoyed by all Bulgarian citizens, without any discrimination whatsoever.

Comments on paragraphs 40-42 of the Information note:

In a judgment delivered on 20 October 2005, the European Court of Human Rights held that there had been a violation of Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (freedom of association). The Court found that the refusal by the Bulgarian State to register UMO Ilinden - Pirin in essence violates the right to freedom of association, but at the same time acknowledged that this refusal was “prescribed by law” and pursued the legitimate aim of protecting national security. At the same time, in the assessment of the Court, the measures taken by the Bulgarian authorities were disproportionate to the actual degree of risk to national security.

Bulgaria has always adhered to the principled position that all judgments of the European Court of Human Rights must be abided by. This applies in full measure to the judgments delivered by the European Court of Human Rights in respect of the Bulgarian State. Accordingly, the Bulgarian side has completely honoured its commitments arising from the cited judgment, in accordance with Article 46, paragraph 1 of the Convention.

By the judgment on the application of UMO Ilinden - PIRIN, the Court held that Bulgaria is to pay jointly the applicants EUR 3,000 in damages and another EUR 3,000 for court expenses. These amounts have been promptly paid. Measures have also been taken to prevent similar violations of Article 11 of the European Convention on Human Rights in the future.

At the same time, it should be expressly noted that the judgment of the European Court of Human Rights does not give rise to an obligation for the Bulgarian side to automatically register UMO Ilinden — PIRIN as a political party.

The matter of registration of any party whatsoever is entirely within the competence of the court, in accordance with the Political Parties Act.

All avenues for registration on the basis of the effective Political Parties Act were open — and remain open — to the applicants, regardless of their ethnic self-identification, without restrictions, on an equal footing with all Bulgarian citizens. The requirements of the Political Parties Act are clear and apply to everybody without exception.

Comments on paragraph 43 of the Information note:

In connection with the recommendation of the Committee of Ministers of the Council of Europe that “additional efforts are expected from the State as regards teaching of and in the languages of persons belonging to minorities”, it should be noted that Bulgaria has taken a number of measures and has made substantial progress in this respect.

Article 36 (2) of the Bulgarian Constitution guarantees citizens, whose mother tongue is other than Bulgarian, the right, in addition to the compulsory study of the Bulgarian language, to study and to use their own language. Article 8 (3) of the Public Education Act states: “Pupils whose mother tongue is other than Bulgarian, in addition to the compulsory study of the Bulgarian language, shall have the right to study their own mother tongue in the municipal schools under the protection and control of the State.”

Article 8 (4) of the Regulations for Application of the Public Education Act defines “mother tongue” as “the language in which the child communicates in his or her family.”

The relevant instruments of secondary legislation establish the procedure for conduct of the instruction in and teaching of a mother tongue on a voluntary basis from the 1st to the 8th grade.

Turkish is studied as a mother tongue on the basis of syllabi and teaching aids approved by the Ministry of Education and Science at private Muslim secondary schools in Shoumen, Rousse and Momchilgrad, as well at the Balkan Schools of the private Balkan Colleges Foundation and at the Drouzhba private school of the Bulgarian-Turkish Democratic Foundation.

Armenian, Hebrew and Greek are also studied as mother tongues at Bulgarian schools in Plovdiv, Sliven and other cities. In Sofia, there are two state schools with an enrolment of some 750 pupils of Armenian origin, who study Armenian in four periods weekly, and the number of pupils studying Armenian in Plovdiv approximates 350. Armenian is also taught and studied in other cities countrywide at Saturday and Sunday schools.

At the Dimcho Debelyanov Jewish School in Sofia, one-third of the pupils are of Jewish origin, and the rest of the enrolment includes children of Bulgarian, Turkish, Roma and Korean origin. They all study Hebrew and English, even though Hebrew is not a mother tongue of Bulgarian Jews. Besides this, Sunday schools for the study of Hebrew have been set up in Sofia, Rousse, Vidin, Plovdiv, Burgas and Kyustendil.

The Ministry of Education and Science has a large number of experts charged with organising the teaching of the study of Turkish, Romany, Armenian and Hebrew as mother tongues.

A Strategy for Educational Integration of Children and Students from Ethnic Minorities and an Action Plan for its implementation in the period ending 2009 were adopted in 2004. In 2007 the Ministry of Education and Science established benchmarks and procedures for monitoring and evaluation of the application of the goals and tasks of the Strategy and Action Plan at the national, local, school and pre-school level.

A Centre for Educational Integration of Children and Students from Ethnic Minorities was set up with the Council of Ministers in 2005. The Strategy for Educational Integration sets forth the principal strategic goals of the activity of the Centre. It has been established to support the implementation of the government policy regarding the educational needs of children and students from ethnic minorities. This policy has as its framework the National Programme for Development of School Education and Pre-primary Education and Training (2006-2015). This means that for “those children who do not have an equal start, special care is necessary for their adequate participation in the educational process”. The Centre develops, finances and implements projects intended to guarantee access to quality education and to improve the results of the instruction and teaching to children and students belonging to minority groups.

Within the Ministry of Education and Science, a special department was set up, charged with the development of mechanisms for instruction and teaching of children and pupils with intercultural elements; overcoming the negative stereotypes and prejudice in respect of persons who are different; sensitising children and pupils and cultivating skills to strengthen solidarity in a multi-cultural environment; raising the self-esteem of children and pupils in respect of their cultural identity.

Comments on paragraph 44 of the Information note:

The Bulgarian side has committed itself to a strict application of the principles of the Framework Convention for the Protection of National Minorities.

Within this context, it should be recalled that in accordance with Article 10, paragraph 2 of the Framework Convention for the Protection of National Minorities, only where there is “a real need” the respective Party must “endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.” According to the Explanatory Report to the Framework Convention (paragraph 64), the provision of Article 10, paragraph 2 leaves Parties “a wide measure of discretion”. The Advisory Committee itself admits that “there is no *prima facie* impediment” to the use of the mother tongue in dealings with the administrative authorities (paragraph 77 of ACFC/OP/I(2006)001).

Therefore, the current state of affairs in respect of the use of languages by persons belonging to minorities is fully consistent with the criteria established in the Framework Convention itself.

Specifically, in relation to criminal proceedings, it should be noted that according to Article 21 (2) of the Criminal Procedure Code, in criminal proceedings “persons who have no command of the Bulgarian language may use their native language or another language. In such cases, an interpreter shall be

appointed." In accordance with Article 142 (1) of the Criminal Procedure Code, upon conduct of an interrogation, when the accused party or the witness has no command of the Bulgarian language, an interpreter is appointed.

Also, Item 3 of Article 63 (1) of the Regulations for Application of the Ministry of Interior Act states that the detainee is issued a written order of detention, which states the grounds for detention. The order is signed by the police authority and by the detained person. The rights of the detainee, as listed in the order of detention, expressly include the right to use an interpreter in case the detainee does not understand the Bulgarian language.

Article 15 of INSTRUCTION No. I§-2451 of 29 December 2006 on the Procedures to Be Followed by Police Authorities upon Detention of Persons at the Structural Units of the Ministry of Interior, on the Equipment of and Order at the Places for Accommodation of Detainees expressly states that "any detainee, who does not understand the Bulgarian language or is deaf or dumb, shall be familiarised with the grounds for his or her detention and with the liability provided for in the law, and shall be given clarification of his or her rights under Article 14 in a language which he or she understands with the assistance of an oral interpreter or a sign-language interpreter."

These requirements are strictly applied.

Comments on paragraph 45 of the Information note:

It is a fundamental principle of international law that each State has sovereign discretion to decide whether to accede to a particular international legal instrument or not . In this sense, the Bulgarian side owes no explanations why, similar to other Member States of the Council of Europe, it has acceded or not to certain existing conventions and protocols of the Council of Europe.

Bulgaria is party to 79 conventions and protocols of the Council of Europe. At the same time, along with other 24 Member States of the Council of Europe, Bulgaria has not acceded to the European Charter for Regional or Minority Languages (Council of Europe ETS No. 148). Accession to the Charter in question is not an obligation arising from the membership of Bulgaria in the Council of Europe. Upon joining the Council of Europe, Bulgaria did not assume such a commitment unilaterally, either.

Within this context, we note for your information that there are certain differences between some of the provisions of the Charter and the relevant national legislation. The term "regional languages" does not exist in Bulgaria, and in respect of the languages used by persons belonging to ethnic or linguistic minority groups, the term "mother tongue" has been adopted in the Constitution of the Republic of Bulgaria, Article 36 (2).

The Bulgarian law ensures the study of the mother tongue as a compulsorily elective subject, but overall instruction is conducted in the Bulgarian language. There are no impediments whatsoever to the use of languages other than Bulgarian in the personal sphere and everyday communication.
The existing lack of correspondence in respect of essential terms is a serious impediment to a possible signature and ratification of the Charter by Bulgaria. At the same time, it should be noted that Bulgaria is party to the Framework Convention for the Protection of National Minorities of the Council of Europe, which covers in more general terms a large part of the issues treated in the Charter. At present Bulgaria prioritises the effective application of the principles enshrined in the Framework Convention, including a further improvement of national legislation and the taking of the practical measures necessary to this end.

Ministry of Interior

<u>Additional Information from the Ministry of Interior</u> on the information note on the fact-finding visit to Sofia (5-7 November 2008) by Mr Serhiy Holovaty, Chair of the Committee on the Honouring of obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

1. Regarding paragraphs 27, 28 and 61 in respect of the triability of Ministry of Interior personnel

By an amendment to Item 6 of Article 396 (1) of the Criminal Procedure Code, adopted in December 2008 (*State Gazette* No. 109 of 23 December 2008), the personnel of the Ministry of Interior and of the State Agency for National Security are no longer triable by the military courts.

2. Regarding Section IV in respect of minority rights

The Ministry of Interior is actively involved in the work on the Decade of Roma Inclusion 2005-2015 initiative.

In implementation of the National Action Plan for the initiative, according to Priority 5: "Protection against discrimination and ensuring equal conditions," one-week theoretical and practical training courses on "Police Work with Ethnic Minorities" are held annually on a regular basis at the national and regional level.
Concrete topics are discussed at these courses, such as: "Traditions, Lifestyle and Culture of Roma Communities", "Human Rights and Skills for Work with Representatives of Roma Communities", "Identifying Problems of Public Order and Security in Local Roma Communities", "Crime Prevention in Roma Communities", "Application of a Problem-Oriented Approach to Enforcing Order and Security in Roma Communities", "Addressing Problems of Roma Communities within the Context of the Community Policing Strategy", "Problems of Security in Roma Communities", "Minorities and the Police: the Inevitable Change" etc.

The practical modules, involving visits to areas with compact Roma population and first-hand familiarisation with the daily police routine, contribute substantially to the upgrading of the professional training of police officers. Approximately 150 police officers on the average are trained in these courses each year.
The Ministry of Interior is also involved in the implementation of Phare Project 2004/016-711.01.03 entitled "Improvement of the situation and inclusion of the disadvantaged ethnic minorities with a special focus on Roma", implemented by the National Council for Co-operation on Ethnic and Demographic Issues with the Council of Ministers. Four training seminars with the participation of 80 police officers of the Ministry of Interior structures were organised and held between 14 April and 17 May 2008.

3. Regarding paragraphs 50-55 in respect of the efforts to combat corruption

In a practical and organisational aspect, the fight against low- and mid-level corruption in central and local government, affecting directly the interests of a broad range of citizens, is implemented by a specialised Corruption Department within the structure of the Organised and Serious Crime Suppression Directorate at the Chief Directorate "Criminal Police" of the Ministry of Interior. At the level of regional directorates of the Ministry of Interior, specialised officers have been designated by orders to handle this task. The suppression targets the corrupt practices of court administration officials, professional providers of legal services (notaries, lawyers), and central and local government officials.

The State Agency for National Security combats high-level corruption which impairs the prestige of national government and the judicial system.

Priority is assigned to the criminal schemes involving civil servants intended to amass illicit profits from customs and tax fraud, abuse of resources from EU funds and mismanagement of state and municipal property.

Significant exploitations have been achieved of acts of corruption committed by high-level public officials who, by their actions, impair the prestige of the judicial system and national government.

According to the Co-operation and Verification Mechanism established by the European Commission, arrangements have been made at the Chief Directorate "Criminal Police" for the elaboration of follow-up countercorruption programmes. Besides this, mechanisms have been set up which make it possible to monitor progress and expand support for coping with these wrongful occurrences.

Regarding the European Commission's decision to cut Bulgaria's access to EUR 220 million in funding from the EU Structural Funds, cited in the Information note, it must be noted that the law-enforcement authorities:

the Ministry of Interior, the prosecutor's offce and the State Agency for National Security, jointly with the team of Deputy Prime Minister Meglena Plougchieva, have taken measures for the adequate and prompt conduct of checks, even at the slightest doubt of irregularities in claiming resources from the general budget of the European Communities. In this connection, a special unit has been set up within the Chief Directorate "Criminal Police", whose members work for the detection of unlawful acts of corruption as well as for the prevention of this type of criminal activity.

Acts of corruption committed by local government officials diminished to a certain extent by the end of 2008. According to information of the Organised and Serious Crime Suppression Directorate and the Combating Organised Crime Sectors at the Ministry of Interior Regional Directorates, a total of 67 pre-trial proceedings have been instituted against 60 public officials (of whom 16 officials of the judiciary and the court administration) and against their 14 accomplices who are non-officials. Twenty of the police investigations have been instituted in connection with corruption in the judicial system and the court administration.

Detailed statistics:

Five organised crime groups have been detected, and charges have been brought against a total of 12 perpetrators, including seven officials (*one head of a Department of Forensic Medicine and Deontology, one mayor, one chief of a territorial structure of the National Agency for Fisheries and Aquaculture, three personnel members of the Road Tolls and Permits Administration at Dourankoulak, one private company officer*) and five non-officials.

The Stara Zagora Organised and Serious Crime Suppression Sector has identified an organised crime group of two prosecutors and one lawyer, aided by other public officials of the court and the prosecutor's office. Investigative Case No. 133 on the dockets of the National Investigation Service for 2008 has been instituted. Work on this case continues jointly with the Supreme Cassation Prosecution Office, the Sofia City Prosecution Office and the National Investigation Service. Charges against incriminated public officials were brought on 15 January 2009. On this case, the Corruption Department of the Organised and Serious Crime Suppression Directorate last year conducted a separate check under a case file instituted by the Supreme Cassation Prosecutor's Office reacting to a newspaper report about violations allegedly committed by a prosecutor. The check established unregulated contacts with persons having a criminal record, impairing the prestige of the judicial system. At the recommendation of the Supreme Cassation Prosecutor's Office, the prosecutor was censured.

Four pre-trial proceedings have been instituted under Article 321 of the Criminal Code: three police investigations in connection with the participation of six accused persons (of whom one public official) in a criminal group, and one investigative case against an investigating magistrate.

Acts of corruption committed by 18 public officials in the judiciary and the court administration have been documented: two judges; two investigating magistrates; six prosecutors; five officials of the Ministry of Justice; one lawyer; one notary of the Sofia Bar Association; one public enforcement agent.

Forty-two public officials in central and local government and the customs administration and their 12 accomplices who are non-officials are under investigation: six persons of the private sector; five customs officers; five personnel members of the Agriculture and Forests Municipal Unit; four personnel members of the Road Tolls and Permits Administration; four personnel members of the National Revenue Agency; three company officers of the Maritsa East 2 Thermoelectric Power Plant, Kovachevo Village; two high-level public officials of the former National Road Infrastructure Fund; two municipal personnel members; one chief of the State Veterinary and Sanitary Control, Svilengrad; one head of the Department of Forensic Medicine and Deontology, Alexandrovska Hospital; one chief of technical service in Chernoochene Municipality, Kurdjali Region; one head of the Razgrad Branch of the Bulgarian National Audit Office; one mayor of Mikre Village, Lovech Region; one chief inspector at the Plovdiv Water and Sewerage Company; one chief expert at the Licences and Permits Department, Sandanski Municipality; one personnel member of the Ministry of Finance; one personnel member of the Municipal Markets Specialised Unit and municipal councillor in Yambol Municipality; one personnel member of the Pazardjik Regional Labour Inspectorate; one deputy mayor of Zlatograd Municipality; one vice dean at the Faculty of Dentistry of the Plovdiv Medical University.

In 2008, checks were conducted on four prosecutorial case files, the results of which were sent to the Supreme Cassation Prosecutor's Office and the Sofia City Prosecutor's Office with a recommendation to institute pre-trial proceedings: against participants in an organised crime group specialised in criminal acquisition of corporeal immovables with the participation of a notary; against a prosecutor who frustrated criminal prosecution of one citizen; against a judge, for criminal offences committed by him in his official capacity; against a prosecutor of an appellate prosecutor's office, for unregulated contacts.

Nine police investigations were completed in 2008 and were sent to the prosecutor's office with a recommendation to commit for trial 14 public officials.

Four police investigations were instituted in 2006, and one police investigation was instituted in 2007, against five public officials, including: a former executive director of the Agriculture State Fund, submitted at a court hearing of the Sofia City Court (pre-trial proceeding of 2006); a former executive director of the Ozelenyavane [Landscaping] EAD municipal company (pre-trial proceeding of 2006).

In May 2008, the Sofia City Prosecutor's Office submitted to court indictments: of a Ministry of Finance personnel member in connection with bribery under Article 301 of the Criminal Code (pre-trial proceeding of 2006); of a chief accountant of Prosoft AD, Sofia (pre-trial proceeding of 2006); of three persons: a former chief secretary of the National Veterinary Service, a former director and a high-level public official of the Sofia Regional Veterinary Service (pre-trial proceeding of 2007). Sent to the Sofia City Prosecutor's Office.

Under the four pre-trial proceedings instituted in 2008, six public officials have been indicted: two high-level officials of the former National Road Infrastructure Fund, submitted at a court hearing of the Sofia City Court in July 2008; a customs officer in Stara Zagora; three company officers of the Maritsa East 2 Thermoelectric Power Plant, Kovachevo Village, for theft. A charge against a former head of the Razgrad branch of the Bulgarian National Audit Office was submitted to court on 11 December 2008 under a completed police investigation of 2008.

Materials on six cases of acts of corruption committed by seven public officials were sent to the prosecutor's office in 2008 with a recommendation to institute pre-trial proceedings.

Official malfeasance and bribery predominated among the criminal offences detected in 2008: 24 official malfeasance offences (Articles 282-285 of the Criminal Code); 22 bribery offences (Article 301-307 of the Criminal Code). Five cases of corruption involving Ministry of Interior personnel were detected.
Thirteen public officials were convicted in 2008, compared to six in 2007.

In five cases of the Organised and Serious Crime Suppression Directorate and the Organised and Serious Crime Suppression Sectors in the 2005-2007 period, six public officials of the judiciary and the court administration have been convicted: an investigating magistrate of Territorial Department Six of the Sofia Investigation Service (investigative case of 2005); a deputy director of the Pernik District Investigation Service and an investigating magistrate of the Pernik District Investigation Service (investigative case of 2006); an investigating magistrate of Territorial Department Six of the Sofia Investigation Service (investigative case of 2006); a former director of the Hebros Prison Hostel with the Plovdiv Prison (police investigation of 2007); a guard at the Pazardjik Regional Unit of Investigative Detention Facilities with the Ministry of Justice (police investigation of 2008). The person received a conditional sentence after a plea bargain agreement. A case against a prosecutor of the Supreme Cassation Prosecutor's Office, detained by the Organised and Serious Crime Suppression Directorate at the end of 2007 on charges of bribery, was proceeded with in December. The hearing has been adjourned for 18 February 2009.

Seven public officials were convicted in 2008: a chief expert at a Regional Veterinary Service, sentenced in May conditionally to deprivation of liberty for one year and six months with a three-year probation period; on 25 November 2008 the Sofia City Court sentenced two former high-level public officials of the former National Road Infrastructure Fund, respectively, to deprivation of liberty for five years and a fine of BGN 20,000 and conditionally to deprivation of liberty for one year and a fine of BGN 5,000; a customs officer of Stara Zagora, sentenced conditionally to deprivation of liberty for six months with a three-year probation period, a fine of BGN 1,000 and a three-year disqualification from practising the occupation; three company officers of the Maritsa East 2 Thermoelectric Power Plant were convicted of theft: one person was sentenced to probation for ten months and two persons were sentenced to probation for six months, a deduction from the wage and 100 hours of community service.

4. Regarding paragraph 56 in respect of updated statistics on alerts of corruption against Ministry of Interior personnel, including on investigations by the Ministry of Interior into criminal acts committed by the police

Summarised information regarding the measures taken against Ministry of Interior personnel for detected acts of corruption in 2007 and 2008

1. Disciplinary measures	**2007**	**2008**
1.1. dismissed according to disciplinary procedure	36	42
1.2. other disciplinary sanctions imposed	35	17
2. Administrative measures		
2.1. released according to administrative procedure (resigned, incl. retired)	8	5
2.2. transferred to other positions with a view to distancing them from a corruption environment	6	8
3. ***Referred to prosecutor's office*** *(out of total number of personnel members against whom measures were taken during the period)*	40	57

The number of Ministry of Interior personnel members on whom the severest sanction under the Ministry of Interior Act, *"dismissal,"* was imposed in 2008, increased by *six personnel members* compared to 2007. As a result of the improved co-operation and joint actions of the Inspectorate Directorate and the Internal Security Directorate of the Ministry of Interior with the military district prosecutor's offices countrywide, the total number of personnel members against whom measures were taken at the competent prosecutor's offices in connection with their acts of corruption increased substantially in 2008.

5. Regarding paragraphs 60-66 in respect of the alleged human rights abuses by the police, lack of accountability and impunity of police officers, no proper documenting of medical examinations etc.

Combating the occurrences of brutality is a standing task of all levels at the Ministry of Interior. The procedural guarantees of respect for citizens' rights and freedoms are enshrined in the Ministry of Interior Act (Article 4). A check is conducted in respect of each particular case of wrongful detention of citizens at the Ministry of Interior structural units, use of arms, physical force and auxiliary means by Ministry personnel, and if guilt is proved, measures are taken against the culprit and his superiors. According to the requirements of the intradepartmental statutory instruments, the case records are mandatorily sent to the Prosecutor's Office for enforcement of criminal liability.

At all meetings with the command personnel, the status of personnel discipline, as well as the handling of alerts, complaints and requests by members of the public alleging misconduct of Ministry of Interior personnel, are singled out as a key indicator of the effectiveness of each service. Arrangements have been made for a comprehensive, in-depth and impartial clarification of the data on violations committed by Ministry personnel and their follow-up by the service commands in person. Specific measures are elaborated on a regular basis for the prevention and non-admission of such incidents and for the tightening of discipline.
Keeping the public promptly and accurately informed of every more typical case of police brutality has become an established practice.

Discipline-tightening measures have been elaborated, including non-admission of incidents of brutality. The command personnel, who have tolerated incidents of brutality on the part of their subordinates, are also held accountable for ineffective preventive, control and personnel performance.

Thematic overviews are prepared at the Sofia and the Regional Directorates of the Ministry of Interior regarding complaints received against Ministry personnel. Measures are taken to eliminate the causes and the conditions that have led to the misconduct. The disciplinary practice in the structural units concerned is reviewed.

The Human Resources Directorate conducts checks to verify compliance with the measures planned for the prevention of police brutality and reports back to the Ministry leadership.

Additional checks are conducted of the cases of police brutality reported in the monthly bulletins on discipline and disciplinary practice.

Cases on record containing data of police brutality (use of auxiliary means, use of physical force and wrongful escorting to, detention at, or summoning to the Ministry of Interior structural units)
1 January 2007 — 12 December 2008
Total number of alerts and complaints received at the Ministry of Interior: 325,
- of which checks in progress: 3
- total found as justified: 31

Total sanctions:
- dismissal: 5 sanctions
- barring from entry into competition for promotion in category or grade: 1 sanction
- censure: 17 sanctions
- written warning: 14 sanctions
- reprimand: 4 sanctions

According to information of the Supreme Cassation Prosecutor's Office, a total of 144 pre-trial proceedings against Ministry of Interior personnel in connection with police brutality were instituted in the Military Appellate Court District during the same period (1 January 2007 - 10 December 2008). Of these, 63 were terminated, and 27 were referred to military courts with an indictment or with a decree on release from criminal liability. In 48 pre-trial proceedings, the investigation is in progress, and six cases have been transferred to the competent civil prosecutor's offices as it was established that the acts were not committed in the course of or in connection with the performance of duty on the part of the police officers.

The pre-trial proceedings break down as follows by military district prosecutor's office:

Prosecutor's office	Pre-trial proceedings instituted	Pre-trial proceedings terminated	Referred to court	Pending
1. Sofia Military District Prosecutor's Office	54	18	11	25
2. Plovdiv Military District Prosecutor's Office	36	19	2	12
3. Sliven Military District Prosecutor's Office	11	3	5	3
4. Varna Military District Prosecutor's Office	18	9	5	4
5. Pleven Military District Prosecutor's Office	25	14	4	4
Total	**144**	**63**	**27**	**48**

An analysis of the data shows that incidents of brutality at the Ministry of Interior are an isolated phenomenon. They account for not more than 0.50% of all breaches of service discipline committed at the Ministry.

Even though such cases are isolated, the reaction to them is as quick as possible and uncompromising. Engaging in brutality is attributed to low legal awareness of personnel and excess of authority. One of the key preconditions for the cited cases of brutality is lacking or lax control on the part of the superiors in respect of their subordinates, as well as ineffective measures for non-admission of such occurrences.

The Permanent Commission on Human Rights and Police Ethics, which has been functioning at the Ministry of Interior since 2003, plays an important role for the prevention of police brutality. The activity of the Commission targets mainly improvement of the practices of respect for human rights and assertion and popularisation of the ethical standards enshrined in the Code of Conduct of the Civil Servants in the Ministry of Interior, which was also adopted in 2003. Regional Commissions on Human Rights and Police Ethics have been set up at each Regional Directorate of the Ministry of Interior, and they carry out activities for the prevention of police brutality by means of training, partnership with the local authorities, and co-operation with vulnerable population groups, non-governmental organisations etc.

Instruction No. I-167 of 2003 on the Operating Procedures to Be Followed by Police Authorities upon Detention of Persons at the Structural Units of the Ministry of Interior, the Equipment of the Places for Accommodation of Detainees and the Order Therein was adopted in 2003 (amended and supplemented in 2006 by *Instruction No. Iз-245 of 29 December 2006 (promulgated in the State Gazette No. 9 of 26 January 2007)*.

The Instruction regulates in detail all operating procedures that the police must follow upon detention of persons with a view to respecting human rights (due documenting, informing detainees of their basic rights and having them sign a declaration indicating whether the detainee wishes to benefit from these rights, assessing the need of a medical examination etc.) The Instruction also makes provisions concerning police action in various exceptional circumstances (e.g. lack of a detention premise, detention of an alien or of a refugee, use of a defence lawyer according to the procedure established by the Legal Aid Act, finding that a detainee is ill etc.)

A section of the Instruction deals with the physical conditions of the detention. All premises must conform to minimum standards of sanitation and hygiene.
Besides this, **various forms** of maximum practice-oriented **training** are conducted at the Ministry of Interior.

There is an **active interaction with civil society**, implemented in a variety of forms:
- The Community Policing Strategy and the operation of the local commissions for public order and security;
- Work with representatives of the minorities, including joint projects and specialised training;
- Independent custody visiting in police detention facilities is exceedingly productive, both for the transparency of police work and for an improvement of police practices.

An "Independent Custody Visiting in Police Detention Facilities" Project was implemented in the 2007-2008 period in co-operation with the Open Society Institute — Sofia. The project covered the nine precinct police departments in Sofia, as well as the cities of Burgas, Varna, Pleven and Plovdiv. The practice of independent custody visiting consists in the opportunity of citizens to visit the detention facilities at the precinct police departments without an advance notice.

Out of a total of 14 criteria monitored under the project, **five criteria showed improvement** since the start of the project in July 2007: informing the detainees of their rights, providing food within the 24-hour detention, treatment of detainees by police officers, record keeping, and maintenance of hygiene at the precinct police departments.

Partial improvement was found on six of the criteria: improvement of the physical condition and equipment of the detention facilities, availability of video surveillance (151 precinct police departments have video surveillance on all premises), allocation of separate service premises and separate premises for detention of men, women, minors etc.

Despite the partial improvement, for reasons beyond the control of the Ministry, by 1 January 2009 a large part of the precinct police department buildings did not yet meet the statutory requirements of Instruction No. I3-2451 of 25 December 2006. Partial progress was also found on the criteria "Access to legal aid" and "Complaints of abuse of force."

No change was found on three of the criteria: policemen's working conditions, providing medical assistance, and providing an interpreter for the detainees.

The independent custody visitors identified the high staff turnover in the police structures, in particular under the jurisdiction of the Sofia Directorate of the Ministry of Interior, as a new problem of current relevance. The understaffing leads to increased stress from the officers' excessive workload, undermines their motivation to work at the Ministry of Interior, and directly affects the quality of police work.

5. Regarding paragraphs 74-77 in respect of *the execution of judgments of the European Court of Human Rights* and holding the institutions and officials who committed the violations accountable for their actions

The competent structures of the Ministry of Interior are currently analysing the judgments of the European Court of Human Rights in the cases against Bulgaria, in which there are data and facts about human rights abuses by the police. Work is impeded due to the lapse of time on the facts, but should be completed by the end of January. Further information will be provided on the matter.

Information within the Competence of the Ministry of Justice on the Information note by the Chair of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Mr Serhiy Holovaty

I. On Section II. Functioning of the judiciary

The constitutional framework of the judiciary is contained in Chapter Six "Judiciary" of the Constitution (Article 117 to Article 133 incl.). In its part dealing with the judiciary, the Constitution was amended on three occasions: in 2005, 2006 and in 2007.
The constitutional framework of the judiciary is elaborated in the new Judicial System Act of August 2007 (effective 11 August 2007).
Meeting on 18 December 2008, the Council of Ministers approved a draft of an Act to Amend and Supplement the Judicial System Act.

1. Regarding the powers of the Minister of Justice in connection with the interaction between the judiciary and the executive

paragraph 20 of the Information note
- "... the role of the Minister of Justice as Chair of the Supreme Judicial Council, with the right of initiative, is problematic"
The "chairmanship" is an organisational and technical right conferred on the Minister of Justice by the Constitution to call to order, as customarily necessary, the meeting of the Supreme Judicial Council (SJC). This right of the Minister of Justice does not predetermine what decision the SJC would adopt. Deciding all matters brought before the SJC remains a sovereign power of the SJC and its 25 members as a collegial authority. The SJC is a legal person in its own right with powers of its own, a budget of its own and an administration of its own and is represented by one of its elected members (Article 16 of the Judicial System Act).
The Minister of Justice has the right to refer particular matters to the SJC and to propose that these matters be examined and decided by the Council. The SJC, composed of as many as 25 members, is completely independent of the Minister of Justice in official and organisational terms. On these matters, the SJC, as a collegial authority, pronounces in the discussion and, conclusively, when a vote is taken at the meetings of the SJC. The Minister of Justice does not participate in the voting when decisions are adopted (sentence two of Article 130 (5) of the Constitution).

- "The Minister's right to propose the budget may contradict the constitutional principle of the budgetary independence of the Judiciary"
There are sufficient arguments justifying the need of such a power as a form of interaction between the executive and the judiciary. Indeed, according to Article 117 (3) of the Constitution, the judiciary has an independent budget. At the same time, this budget is part of the state budget, which is adopted by the National Assembly.
The independence of the judiciary requires that it has sufficient material resources, provided by the State, to carry out its activity without impairment of its independence. The power of the Minister of Justice should be viewed precisely in this light.
The Minister of Justice, as member of the Government, has sufficient information on the financial capabilities of the State. Receiving the respective requests from the administrative heads of the judicial authorities, the Minister is in a position to produce an initial balanced judiciary budget proposal, which would fit optimally into the financial framework of the State for the respective year. This draft is submitted to the SJC for discussion and adoption, and it is actually the SJC that moves to the National Assembly a draft judiciary budget. The final version of the draft budget is adopted by the National Assembly.

2. Regarding the Supreme Judicial Council (SJC)

paragraph 21 of the Information note:
- "It should be ensured that, within the Supreme Judicial Council, judges, prosecutors and investigating magistrates cannot interfere with each other's affairs."
The judiciary in the Republic of Bulgaria consists of courts, prosecution offices and investigation services. Given this state of affairs, it is only natural that the SJC, which represents the judiciary, determines its composition and organisation of work and manages its operation, should be a body comprised of judges, prosecutors and investigating magistrates on a quota basis.
The activity of judges, prosecutors and investigating magistrates in a common constitutionally established collegial authority is intended to ensure a joint governance of the judiciary in its three constituent parts: court, prosecution and investigation, owing to the close link existing between their activities, despite the undeniable specifics and differences in their concrete constitutional functions within the judiciary. This interaction is achieved through balanced participation of representatives of the three components of the judiciary in the elective membership of the SJC.
Since the SJC adopts on its own rules of organisation of its internal procedure, there is no obstacle, if it deems it necessary and expedient, to set up its own internal auxiliary bodies, including on the specific issues concerning the separate constituent parts of the judiciary: for the judges, the prosecutors and the investigating magistrates (Article 30 (4) and Article 37 (3) of the Judicial System Act).
The Supreme Judicial Council adopts its decisions on the basis of proposals of a standing commission and assisting commissions which, in their activity, apply specific procedures and separate criteria in respect of judges, prosecutors and investigating magistrates, that is why, within the SJC, judges, prosecutors and investigating magistrates cannot interfere with each other's affairs.

paragraphs 24 and 25 of the Information note
- "Eleven members [of the SJC] are still elected by Parliament while it remains possible for a simple majority in Parliament to elect all of these members."
In this case doubts for political bias of members of the SJC are ungrounded due to the following:
Making its selection upon the election of SJC members, the National Assembly is guided by the constitutionally established requirements for high professional standing and moral integrity. Broad preliminary consultations and discussions are held to this end. A large part of the elected members are from amongst practising magistrates who meet these requirements and, by law, are depoliticised. The National Assembly took this approach, too, when last electing SJC members of the parliamentary quota.

3. Regarding the Inspectorate to the Supreme Judicial Council:

paragraph 21 of the Information note
- "the Inspectors are given too broad powers, with the risk of interference in the administration of justice."
The wording of Article 132a (6) of the Constitution is sufficiently clear: "The Inspectorate shall examine the operation of the judicial authorities without affecting the independence of judges, jurors, prosecutors, and investigating magistrates in the performance of the functions thereof."
This underlying idea of non-interference by the Inspectorate in the independence of the judiciary is elaborated in Item 3 of Article 54 (1) of the Judicial System Act, which provides that the Inspectorate shall "analyse and summarise the cases which have been completed by an enforceable judicial act, as well as the completed case files and cases of prosecutors and investigating magistrates".
The point of the Inspectorate examining the operation of the judicial authorities (Article 132a (6) of the Constitution) and of analysing the cases which have been completed by an enforceable judicial act and of the completed case files and cases of prosecutors and investigating magistrates (Article 54 (1) of the Judicial System Act) is to establish whether the judicial authorities have applied accurately the established procedural time limits for disposing of the cases and the case files, whether the substantive and adjective law has been applied equally and correctly upon their disposition. This activity of the Inspectorate covers the operation of the courts, as well as the operation of the prosecutor's offices and the investigation services.
This examination and analysis do not constitute interference in the exercise of judicial power and in the functions of the judiciary because they concern matters that have already been disposed of by final and enforceable judicial acts. An interference and impairment of the independence of the judiciary would be the case if the inspectors examined and expressed opinions on pending cases, but not when they examine and summarise the case law after the cases have been completed.
The examination and analysis of the operation of the judicial authorities by the Inspectorate and the presentation of an annual report on its activity to the SJC and making public of information on its operation (Article 132a (8) and (9) of the Constitution) fulfil yet another important function: making the activity that the judicial authorities have performed and are performing more transparent to the public. By examining and analysing the activity that the judiciary has already performed and by keeping the public informed of the operation of the judiciary, the Inspectorate increases the public transparency and familiarity of the operation of the judiciary.

4. Regarding the magistrates

paragraph 21 of the Information note
- "the Probationary period of five years for new judges raises serious difficulties for judicial independence"
The increase of this period from three to five years by the amendment to the Constitution in September 2003 was prompted by the need to test the professionalism and integrity of magistrates in a normal working environment, so as to validate their acquisition of irremovability. This provision was adopted on the basis of a study of the practice and its evaluation in the course of ten years during which the three-year probationary period was applied. This shorter three-year period proved insufficient for magistrates to qualify for irremovability. On the other hand, in the period of deep-going democratic changes in this country since the end of 1989, the national legislation of Bulgaria has undergone thorough and frequent revisions, especially in the pre-accession period, before Bulgaria's admission to full membership of the European Union. This requires more time to master the novelties in legislation in the process of judicial application of the laws. The results of the nearly five-year application of the new framework show better performance in practice and provide stronger guarantees that judges, prosecutors and investigating magistrates of tested, validated and proven professionalism and integrity become irremovable in the judiciary. Under the circumstances in the country, this matter is decisive for the strengthening of the judiciary and for upgrading its professional and moral standing.

paragraph 29 of the Information note

- "...judges are trained only after their appointment and [...] there is no system of evaluation of their competences"

Immediately after assuming office, junior judges, junior prosecutors and junior investigating magistrates pass through a mandatory initial training course at the National Institute of Justice. At the end of the training, the junior judges, junior prosecutors and junior investigating magistrates sit an examination for which they are given a 'pass' or 'fail' mark. If given a 'fail' mark, a junior judge, junior prosecutor and junior investigating magistrate sits an examination again after three months. If marked 'failed' yet again, the person is released from the office held (Article 258 of the Judicial System Act).

Upon initial appointment to office in the judicial authorities, during the first year after they assume office judges, prosecutors and investigating magistrates go through a mandatory course for upgrading their qualifications (Article 259 of the Judicial System Act).

The competence of judges is evaluated through the appraisal system. The appraisal of magistrates is discussed in Section IV "Appraisal. Irremovability" of Chapter Nine "Status of Judges, Prosecutors and Investigating Magistrates" of the Judicial System Act.

In the draft of an Act to Amend and Supplement the Judicial System Act, approved by the Council of Ministers, Article 209a provides that the Supreme Judicial Council will adopt an ordinance on the application of Section "Appraisal. Irremovability".

5. Regarding the cognisance of cases involving Ministry of Interior personnel

paragraphs 27 and 28

An amendment to the Criminal Procedure Code, promulgated in the *State Gazette* No. 109 of 23 December 2008, the cases against Ministry of Interior personnel were made cognisable in the general (civilian) criminal courts.

6. Regarding pre-trial proceedings and the cases against high-level officials and civil servants and compliance with Recommendation No. R(2000)2 of the Committee of Ministers of the Council of Europe

paragraph 15 and paragraph 78

Pre-trial proceedings (preliminary proceedings is a term used in the now superseded Criminal Procedure Code) are conducted within two months, during which the case is sent to the prosecutor. This time limit may be extended once by not more than four months on a motion by the prosecutor, if the case presents a factual or legal complexity. By exception and in extraordinary cases, the Prosecutor General may extend these time limits. The Criminal Procedure Code provides for procedures for summary proceedings (investigation within seven days), immediate proceedings (examination within three days), as well as proceedings in the trial phase: examination of the case at the court on a motion by the accused and reduced judicial trial, which tangibly speed up the procedure.

In connection with the observation about the low number of proceedings against high-level officials and civil servants, it must be noted that the criminal procedure is strictly formal, it is instituted if specific prerequisites exist and is completed according to an established procedure, because it is subservient to the principle of revealing and establishing the objective truth, and the Ministry of Justice is not competent to comment on the number of convicted officials or servants.

In accordance with Recommendation No. R(2000)2 of the Committee of Ministers of the Council of Europe to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, a draft of an Act to Amend and Supplement the Code of Civil Procedure is in preparation. The Act provides that the following be added to the grounds for reversal of judgments in Article 303: where the European Court of Human Rights, by a final judgment, has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms or of the protocols thereto and a new examination of the case is necessary in order to rectify the consequences of the violation (*restitutio in integrum*). This bill is scheduled to be considered by the Government at the end of February 2009. The possibility to reopen the proceedings upon violation established by a judgment of the European Court of Human Rights exists in the Criminal Procedure Code and in the Administrative Procedure Code. Therefore, the allegation in paragraph 75, which invites the generalising conclusion that Bulgaria does not execute the judgments of the European Court, does not correspond to the truth.

7. Regarding the amendment to the Constitution of the Republic of Bulgaria of February 2007

paragraphs 16 to 20 of the Information note

On 12 November 2007, the Deputy Ministers of Justice, Mrs Ana Karaivanova (at that time) and Mrs Sabrie Sapoundjeva, held a meeting with Mr James Hamilton and Mr Guido Neppi Modona, Substitute Members of the Venice Commission, and with Mr Schnutz Rudolf Dürr, Head of Division at the Secretariat of the Commission. The meeting took place in the building of the Ministry of Justice, on the initiative of Minister

Miglena Tacheva, within the visit to Bulgaria by a delegation of the Venice Commission for discussion of the questions raised by the Venice Commission in connection with the amendments to the Constitution of 2007. Prof. Snezhana Nacheva and Mrs Viktoria Nesheva, acting Director of the Council on Legislation Directorate, attended the meeting.
Within the context of the constructive position of the Ministry of Justice on enhanced co-operation with the Venice Commission, in 2008 Minister Miglena Tacheva approached the Commission with a request for an opinion on:
- the draft revision of the Political Parties Act of Bulgaria: November 2008 (the opinions have been received);
- the draft Concept of a new Statutory Instruments Act: with a view to preparing the answer, three experts of the Venice Commission will visit Bulgaria on 27-28 January 2009, and during their visit they will meet with Minister Tacheva and with experts of the Council on Legislation Directorate of the Ministry of Justice;
- the draft of an Act to Amend and Supplement the Judicial System Act (sent at the beginning of January 2009);
- an opinion on the draft of a Meetings, Rallies and Demonstrations Act will be sent shortly.

II. On Section VII. Defamation

Regarding defamation and insult as criminal offences under Article 146-148 of the Criminal Code

paragraphs 71-73 of the information note
Insult and defamation have been proclaimed criminal offences under the Bulgarian Criminal Code to protect the constitutionally established principle of protection of personal dignity. Bulgaria's Constitutional Court, in Judgment No. 20 of 1998, examined in detail the consistency of the provisions of the Criminal Code with the formulations both of the Bulgarian Constitution and of international instruments to which the Republic of Bulgaria is a party: the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The constitutional provisions and the provisions of the Convention do not establish requirements in connection with the type and term of the sentences provided for in the Criminal Code, and the legislature has complete discretion to assess the correspondence and proportionality of these penal sanctions to the particular offences when determining these sanctions. Besides this, according to the Constitutional Court, "the liability (criminal and civil) for insult and defamation as a remedy for the honour, personal dignity and reputation constitutes such restriction on the right to freedom of expression as is admissible both under the Constitution and under the Convention."
As to the observation that the penal sanctions of fine provided for under Articles 146-148 of the Criminal Code lead to sentencing and, respectively, to a convicted status ("criminal record") of the person concerned, it should be noted that in such cases, and in accordance with Article 78a of the Criminal Code and Article 375-380 of the Criminal Procedure Code, the person concerned will be released from criminal liability and an administrative sanction of fine will be imposed on him or her, which will not lead to sentencing and to acquisition of "a criminal record."
Insult and defamation are criminal offences which may be committed by any penally responsible person. It could not be assumed that journalists cannot commit such criminal offences and, respectively, that they do not incur criminal liability for spreading disgracing circumstances or imputing a criminal offence to another person. This would imply that journalists would be placed in a privileged position compared to the rest of the citizens in society. Moreover, the journalistic profession offers far more opportunities to insult or defame another person and makes this act readily accessible (through use of the mass communication media) and, thus, exposes the other person's right to dignity and reputation to a far greater risk of impairment. Therefore, the insult and defamation inflicted by journalists could be reprehensible to an even greater degree than such committed by other persons, but the Bulgarian Criminal Code does not discriminate against them. The proposal to decriminalise defamation and to confine this violation to the sphere of civil liability enforceable according to a civil procedure is even less acceptable. The degree of social danger of this act is so high that it must be created precisely a criminal offence, and liability for it must be enforced precisely under the Criminal Code, with the pursuit of such remedy being left to the discretion of the injured party and being taken outside the sphere of the public prosecution.
It should be noted that the subject under paragraph 73 was not discussed during the meeting with the Minister of Justice.

III. On Section VIII. Other outstanding questions

Regarding the execution of the judgments of the European Court of Human Rights

paragraph 75 of the Information note
In accordance with Recommendation No. R(2000)2 of the Committee of Ministers of the Council of Europe to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, a draft of an Act to Amend and Supplement the Code of Civil Procedure is in preparation. The Act provides that the following be added to the grounds for reversal of judgments in Article 303: where the European Court of Human Rights, by a final judgment, has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms or of the protocols thereto and a new examination of the case is necessary in order to rectify the consequences of the violation (*restitutio in integrum*). This bill is scheduled to be considered by the Government at the end of February 2009. The possibility to reopen the proceedings upon violation established by a judgment of the European Court of Human Rights exists in the Criminal Procedure Code and in the Administrative Procedure Code. Therefore, the allegation in paragraph 75, which invites the generalising conclusion that Bulgaria does not execute the judgments of the European Court, does not correspond to the truth.
The Information note mentions repeatedly, as a generalising conclusion, non-execution of the judgments of the European Court of Human Rights in principle and in general, which is manipulative and does not correspond to the truth. Bulgaria seeks to undertake the measures under the judgments in the cases: individual or general, and is among the countries with a small percentage of non-undertaken general measures. In this connection, the "non-execution of the Strasbourg Court judgments due to a low rate of reopening of criminal cases," cited as a stigma of the judiciary in Bulgaria (paragraph 15) is, to put it mildly, odd.

paragraph 76 of the Information note
In most of the cases cited, the necessary individual measures have been undertaken, and the general measures do not require legislative changes (the particular measures are described in a report of the Committee of Ministers and can be seen there).

paragraph 78 of the Information note
It should be noted that a draft has been prepared at the Ministry of Justice and the Code of Civil Procedure will be amended to this end, so as to bring back the possibility for the reopening of civil proceedings where a violation has been determined by a judgment of the European Court of Human Rights.

IV. On Section VI. Efforts to combat corruption and police abuses

Regarding reports on the situation in prisons

paragraphs 68-70 of the Information note

paragraph 68
The opinion of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), after the visits of its representatives to Bulgaria, is exactly the opposite to the allegations of the NGO prison monitors: there is not a shred of evidence of brutality against persons deprived of their liberty. The latest CPT inspection took place in December 2008. The findings of the prosecutors exercising supervision as to legality at the places of deprivation of liberty are also in the same vein.
Not a single case of corruption at the places of deprivation of liberty was registered in 2008.

paragraph 69
At this point of time, the total prison population is 9,400, i.e. far fewer than the 11,165 indicated in the Information note.

paragraph 70
On the initiative of the Ministry of Justice, a draft of an Amnesty Act has been laid before the National Assembly of the Republic of Bulgaria and is under debate there. After the law enters into force, part of the current number of sentenced persons will be released and this, too, will help overcome overcrowding.
A draft of a new Implementation of Penal Sanctions Act, prepared by a working group at the Ministry of Justice, has been submitted and will be debated shortly. The draft provides for a mandatory minimum amount of accommodation space per person deprived of his/her liberty.

V. Other issues

We believe that certain texts of the Information note prepared by Mr Holovaty contain untrue information which sounds tendentiously negative to Bulgaria. Some of the subjects cited were not at all discussed at the Ministry of Justice during the meeting held, as indicated, and such propositions cannot be made or attributed

to the talks held there. We suggest that such texts, called by the author "key findings" **(paragraph 10 of the Information note)**, be dropped from the report or be replaced by adequate and reliable information.

The Information note repeatedly mentions, as a generalising conclusion, non-execution of judgments of the European Court of Human Rights in principle and in general, which is manipulative and does not correspond to the truth. Bulgaria seeks to undertake the measures under the judgments in the cases: individual or general, and is among the countries with a small percentage of non-undertaken general measures.

Paragraph 31 refers to reports of murders of journalists, which does not correspond to the truth.

In **paragraph 37** the proposition that "historically, ethnic Turks and the Roma were the two biggest groups subjected to discrimination" is definitely exaggerated.

Paragraph 39 and **paragraph 40** mention the ethnic identity of over 5,000 Macedonians which the Bulgarian authorities are reluctant to recognise, and the refusals to register UMO Ilinden on this basis, and an attempt is made to politicise the subject. The refusals to register UMO are definitely fully consistent with the requirements of the law and are due to the lack of the minimum required number of members.

DEAR MR LYUTFI,

Further to your letter of 13 January 2009, please find enclosed my comments on the draft of an Information note on the fact-finding visit to Bulgaria in November 2008 by the Chair of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Mr Serhiy Holovaty, within the framework of the post-monitoring dialogue.

My principal remarks are on Section V. Office of Ombudsman. I deemed it expedient, though, to make a brief comment on Section VI. ii. Police abuses (paragraphs 65-70) and to provide the further information requested in paragraph 67, because some of the allegations and conclusions of the NGOs, included in that part of the information note, diverge from the results of the checks and opinions of the Ombudsman's institution.

In connection with the above, I enclose copies, in Bulgarian and in English, of my report regarding checks conducted at places of deprivation of liberty in the February-May 2007 period and an opinion regarding a check on my own initiative into the incident upon the detention that led to the death of Angel "Chorata" Dimitrov.

I believe that the partial particularisations and further information on particular issues contribute to a more adequate reflection of the spirit of the discussion and the specific questions considered at the meeting with Mr Holovaty, as well as for a more realistic presentation in the report of the state of affairs on some of the issues of the post-monitoring dialogue.

Enclosures: as above

Respectfully,

Ginyo Ganev

COMMENTS

by the Ombudsman of the Republic of Bulgaria on the Information Note by the Chair of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe on the Fact-Finding Visit to Sofia (5-7 November 2008)

Section V. Office of Ombudsman

1. It is suggested that paragraph 47 be rephrased as follows:

"Over the last two years, the Ombudsman has unfolded his activity and functions on a full-fledged basis as a intercessor for the rights of citizens. An emphasis is laid not only on handling individual complaints from citizens, but also on addressing, on his own initiative, matters which give rise to broad public concern. During our meeting, Mr Ganev confirmed the completely independent functioning of the institution. He also recalled his proposal of 2006 for the need to make it possible for civil-society organisations and legal persons, too, to approach the Ombudsman."

2. Paragraph 48 is suggested to read as follows:

"Moreover, the Ombudsman emphasised that the local public mediators are not fully independent from the municipal authorities. He suggested that a legal framework be introduced, guaranteeing budgetary independence of the local mediators, as well as their interaction, co-operation and methodological support on the part of the National Ombudsman."

Section VI. ii. Police abuse, paragraph 67

In accordance with the requested "further information from the Ombudsman's Office on resources available to examine complaints against the police and statistics concerning this kind of complaint," the Ombudsman reports the following:

The Ombudsman's activity and experience in this sphere finds expression in Section "Public Order and Security" of his annual reports.

The problems addressed by citizens in complains concern mainly breaches of public order and security (disturbance of the peace, deprivation of a healthy lifestyle related to noise etc.) Part of the complaints received are about inaction or insufficient action by the Ministry of Interior authorities on alerts submitted by citizens in connection with property offences, inter-personal conflicts and other relations at civil law. The complaints against acts by the Ministry of Interior authorities violating human rights are few and far apart. In practice, there are no complaints or alerts about arbitrary treatment, brutality, wrongful detention, torture etc. by the police. A total of 119 complaints in the general category "Public Order and Security" reached the Ombudsman in 2007 (*fig. 11, Annex 1 to the 2007 Report*). A total of 217 complaints in this category were checked by the end of 2007 (*fig. 15, Annex 1 to the 2007 Report*).

The Ombudsman has at his disposal substantial resources to check complaints against the police. The Ministry of Interior authorities and the Ombudsman have established a highly efficient interaction in the conduct of checks at his request and prompt reaction to the results, which are brought to the notice of the prosecutor's office . The checks of the complaints concerning acts of police authorities are referred to the appropriate level of governance at the Ministry of Interior, depending on the public relevance of the case, the level of competence, the measures expected to be taken, and the efficiency of operation of the respective authorities. Fine interaction exists at all levels in the Ministry of Interior: Minister, directors of directorate, regional directorates etc.

An Agreement on Interaction and Co-operation with the Ministry of Interior was signed on 16 April 2007, which provides for pooling the efforts and joint action to guarantee the rule of law and human rights in the fulfilment of the statutorily established principal tasks of the Ministry of Interior, strengthening the activities related to suppression of crime and protection of public order, protection of citizens' rights and freedoms and protection of their life, health and property, as well as the provision of administrative services by the Ministry of Interior authorities.

Acting on his own initiative, the Ombudsman has conducted a thoroughgoing check and has made public his opinion on the deeply disturbing case of excessive use of force on the part of the police authorities in the City of Blagoevgrad and the death of Angel "Chorata" Dimitrov in 2005 (The opinion is enclosed).

Section VI. ii. Police abuse, paragraphs 68-70

The Ombudsman would like to present the results of his inspections and checks on the situation in prisons and the actions taken.
His opinion and findings about the situation in prisons does not converge completely with some allegations of NGO prison monitors.
(The Report of the Ombudsman of the Republic of Bulgaria on checks conducted at places of deprivation of liberty in the February-May 2007 period is enclosed).

20 January 2009

OMBUDSMAN OF THE REPUBLIC OF BULGARIA
GINYO GANEV

POSITION OF MR GINYO GANEV, OMBUDSMAN OF THE REPUBLIC OF BULGARIA
March 2006

Regarding: The check on the Ombudsman's initiative into the incident during the arrest that caused the death of Angel Dimitrov-Chorata.

With the conviction that the rule of law and human rights are paramount in a law-abiding state and in keeping with Art. 19, para 2 of the Law on the Ombudsman (published in Durzhaven Vestnik (The State Gazette, (No 48 of 23.05.2003) and Art. 9, para 1, subpara 3 of the Regulation of the Organization and of the Activity of the Ombudsman (published in Durzhaven Vestnik, No 45 of 31.05.2005), the Ombudsman acted on his own initiative with a check into the facts and circumstances concerning the incident that caused the death of Angel Dimitrov-Chorata on 10 November 2005 when officers from the Regional Unit for Combating Organized Crime with the Blagoevgrad Regional Directorate of the Interior arrested him.

In the course of the check the Ombudsman had meetings with members of the staff of the Ministry of Interior, the special working group with the Parliamentary Committee for Domestic Security and Public Law and Order, human rights watch organizations, relatives and the lawyer of Angel Dimitrov-Chorata. The Ombudsman spoke with magistrates and citizens. He asked the relevant institutions to provide materials in writing and documents which were provided and then precisely analyzed them.

In the Ombudsman's understanding what was essential is to see whether the use of force by the policemen exceeded the strictly defined limit that is considered reasonable for the purposes of arrest as defined in the Bulgarian legislation.

The Ombudsman complied, inter alia, with the binding international standards of human rights approved by the United Nations Organization (UNO) and by the Council of Europe (CE) and concerning the use of force and auxiliary devices by the police.

The Ombudsman did not say whether the police use of physical force and auxiliary devices that caused the death of Chorata is a crime in the meaning of the Penal Code. Such a judgment is within the competence of the independent Judiciary. The Sofia Military District Prosecutor's Office has instituted preliminary proceedings. Therefore the Ombudsman did not approach the Prosecution as he may under Art. 19, para 1, subpara 8 of the Law on the Ombudsman.

Summary of the facts

The story of the Ministry of the Interior is that a specialized police operation was executed on 10 November this year to intimidate certain persons of whom Angel Dimitrov, nicknamed Chorata, was one, in line with a plan and on a location which is under the jurisdiction of the Blagoevgrad Regional Directorate of Interior. Officers from the Regional Unit for Combating Organized Crime, the Local Police Station in Blagoevgrad and the Specialized Rapid Reaction Force with the Blagoevgrad Regional Directorate of Interior were involved in the operation.

Around 8.50 PM the policemen located Angel Dimitrov's car and signaled him to stop with a fluorescent police baton. The policemen claim the man did not stop; on the contrary he pressed the speed gear and a police car cut off in his way.
The policemen claim Angel Dimitrov tried to escape in the direction of a residential building nearby and disregarded the police voice commands that must be shouted under such circumstances. Further the policemen claim that Angel Dimitrov was violent when he was arrested. After Angel Dimitrov's death an investigating team that is on standby was sent to the scene. Upon arrival the team found the man was lying motionless without bodily reactions. Dimitrov's wrists were released of the handcuffs and the emergency ward was called immediately. The medical examination showed the man was dead. A case was filed with the District Investigation Office in Blagoevgrad under № 743.

The initial forensic report cites injuries on the head, face and body. It is obvious the explanations offered to the public even by high-ranking police officials that Angel Dimitrov died of a cardiogenic shock on the basis of a disturbance of the aorta are based just on the communication of the man's death.
Later another medical examination was performed by five forensic doctors upon the relatives' request and with support from the Ministry of Interior. The examination concluded that an injury had caused the man's death. The results of the examination
were released on 7 December 2005. After that the Minister of Interior endorsed the resignations of the Director of the Blagoevgrad Regional Directorate of the Interior and of the head of the Regional Unit for Combating Organized Crime and the Regional Police Unit.

The Ombudsman investigated the case and examined the collected information and came to the following main conclusions:

I. What the police did during the arrest of Angel Dimitrov-Chorata violates the Bulgarian legislation

1. The Constitution of the Republic of Bulgaria proclaims human rights, dignity and security as its supreme principle. Art. 28 of the Constitution reads "Everyone shall have the right to life. Any attempt upon a human life shall be punished as a most severe crime." Art. 29 of the Constitution reads that no one shall be subjected to torture or to cruel, inhuman or degrading treatment.

As evident from the facts in Resolution № 0284(2005 of 18 January 2006 of the Sofia Martial Court what the Blagoevgrad policemen did was at variance with the said Constitution-enshrined principles and with the explicit provisions of the Bulgarian legislation.

2. The cases in which the policemen are free to resort to the use of force and auxiliary devices are thoroughly enumerated in the Law on the Ministry of Interior.

The Blagoevgrad policemen's version is that they were acting in the circumstances as described in Art. 78, para 1, subparas 1 and 2 of the said Law, viz. „upon counteraction or refusal to fulfill legal order", and „upon detention of offender who does not obey or resists a police authority".None of the facts from the information available indicates that Angel Dimitrov- Chorata counteracted the police authorities during his arrest or that he refused to fulfill the policemen's orders or that he disobeyed or resisted or attacked the police officers. Moreover, the argument that "the policemen had to use physical force because Dimitrov was the owner of a security and bodyguard service has nothing to do with the hypotheses of Art. 78, para 1 of the Law on the Ministry of Interior" (see Resolution № 0284(2005 of 18 January 2006 of the Sofia Martial Court).

3. Another provision of the Law on the Ministry of Interior that was violated by the Regional Division of Fight against Organized Crime in Blagoevgrad was Art. 79 para 1 reading that „physical force and auxiliary devices shall be used upon explicit warning...". There is not enough evidence that the policemen made such warning nor is it clear whether they were plain-cloth policemen specially for the operation. The evidence of Maya and Eli Zaprevi who had been eyewitnesses and that is in the core of the Resolution of the Sofia Martial Court seems to corroborate that.

4. Art. 79, para 2 of the Law reads that whenever the policemen use physical force they must accordingly consider the concrete circumstances, the nature of the violation of the public law and order and the personality of the offender. The evidence of the eyewitnesses Maya and Eli Zaprevi and the forensic report reflected in the Resolution of the Sofia Martial Court, testify that Angel Dimitrov did not try to escape, did not resist and though he is an owner of a security service company, was practically unable to defend against five well trained policemen.

5. The most glaring violation by the officers of the Blagoevgrad Regional Unit for Combating Organized Crime was of Art. 79, para 3 of the Law on the Ministry of Interior. The provision reads thus: „In using physical force and auxiliary devices the police authorities shall be obliged, if possible, to protect the health and take all possible measures for protection of the life of the person against whom they are directed". The case in question is an assault and battery by five policemen on Dimitrov who had already been cuffed and with bad knocks on vitally important body organs.

6. The policemen disregarded Art. 79, para 4 of the Law of the Ministry of Interior, viz. the use of physical force and auxiliary devices shall be stopped immediately after achieving the purpose of the applied measure. The eyewitnesses testify that during the assault Dimitrov kept shouting and saying he could not breathe. However, the assault continued which is evidence of "the policemen's biased attitude to the health of the person they were beating" (see Resolution №0284(2005 of the Sofia Martial Court).

II. In addition to the violation of the Bulgarian legislation, basic international human rights standards of the United Nations and of the Council of Europe regarding the use of physical force and auxiliary devices by the police authorities were violated.

The policemen's doings that caused the death of Angel Dimitrov-Chorata disagree with the international human rights standards of the United Nations Organization and of the Council of Europe regarding the use of force by law enforcement institutions, viz.:

- The European Convention on Human Rights and Fundamental Freedoms;
- The UN Code of Conduct for Law Enforcement Officials;
- The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- The Declaration on the Police of the Council of Europe.

The European Convention on Human Rights and Fundamental Freedoms has a direct impact on our national legislation and by virtue of Art. 5, para 4 of the Constitution of the Republic of Bulgaria shall supersede any domestic legislation stipulating otherwise. Though the other cited documents are not legally binding, the UN member states and the members states of the Council of Europe, and the Republic of Bulgaria is a member of both, have the moral and political obligation to harmonize their legislations and practices with those standards. Compliance with these standards is an evaluation criterion in the country monitoring reports on human rights.

1. Art. 2 of the ECHRFF guarantees the right to life and describes the exceptional circumstances in which deprivation of life is not regarded as contravention.

The Convention reads that the use of force can be justified if it is no more than absolutely necessary. Art. 2 (2) of the ECHRFF enumerates three cases in which the deprivation of life is not regarded as contravention to Art. 1 (in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; in action lawfully taken for the purpose of quelling a riot or insurrection). Art. 2 covers, apart from the deliberate deprivation of life, situations in which "the use of force" is allowed not for the purposes to achieve an aim. Whether the use of lethal force was unintentional or intentional is just one of the factors to be considered in deciding whether the use of force was necessary. Any use of force must not exceed the reasonable limit which is considered absolutely necessary the achievement on one or more of the above-mentioned aims.

The Convention postulates the force used must be strictly in proportion to the achievement of the legally required aim. The use of force won't be regarded as proportionate and cannot justify the deprivation of life in the arrest of a person who does not put up resistance and does not try to escape. Therefore there cannot be justification for the use of force which caused death in effecting the arrest of a person who could not be expected to constitute a serious threat. Apart from the exceptions, Art. 2 of the ECHRFF rules out the use of force that may cause death. The law case of the European Court of Human Rights in Strasbourg is comparable.

One such example is Nachova and others vs. Bulgaria, of 26.02.2004 on which the Court's judgment was that „in the light of the imperative need to preserve life as a fundamental value, the legally required aim, the arrest, cannot justify the risk to which a human life is subjected whenever the fugitive does not constitute a threat to anyone and has not committed a violent crime. Any other approach would be incompatible with the generally acknowledged today fundamental principles of democratic societies."

In the case referred to it was not absolutely necessary for the policemen in Blagoevgrad to use force nor was the force commensurate with the lawful arrest of Angel Dimitrov-Chorata.

Art. 2 of the ECHRFF upholds one of the major values of the democratic societies of the Council of Europe. The state through its institutions and officials must abstain from the unlawful deprivation of life and must take all needed positive measures to guarantee each human life within its jurisdiction. The Government is bound to ensure the lawful investigation procedures and apply them all the time. These procedures must contain precise rules concerning the evidence that a human life had been lost because of the use of force.

2. Art. 3 of the UN Code of Conduct of Law Enforcement Officials has been breached:
"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

It has to be noted that the Law on the Ministry of Interior is not fully compatible with this standard. Art. 78 of the Law which reads that "the police authorities can use physical force and auxiliary devices in fulfillment of

their official function when they cannot be realized otherwise." However, the law does not specify whether the use was strictly necessary.

The official comment on Art. 3 of the UN Code of Conduct approved by the UN General Assembly on 17 December 1979 shows that the use of force by law enforcement officials is possible by way of exception. Though the law enforcement officials are free to resort to force in a reasonable measure in order to prevent crimes, the effecting of the lawful arrest of a criminal or a suspect in a crime, force cannot be used in circumstances other than these. In no way must this text be interpreted as a permission to use force which is not commensurate with the legitimate objective.

3. Another international standard is enshrined in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as adopted by the 8th Congress of the United Nations Organization on 7 September 1990 r. According to Art. 4 of the General Provisions "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result". Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; and not least, the law enforcement officials must try to minimize damage and injury, and to preserve human life.

The evidence shows that the policemen of the Regional Unit for Combating Organized Crime in Blagoevgrad could have achieved the desired result, the arrest of Dimitrov, without the use of force in such an excessive measure that caused his death. Once handcuffed, he was lying prostrate and helpless and unable to resist, that is, in fact he had been detained and there was no need for the policemen
to use force.

4. Art. 12 of the Declaration on the Police of the Council of Europe establishes an international standard to which the one in question is similar, viz., "In performing his duties, a police officer shall use all necessary determination to achieve an aim which is legally required or allowed, but he may never use more force than is reasonable."

The position of the Ombudsman of the Republic of Bulgaria is that during the arrest of Angel Dimitrov-Chorata the police in Blagoevgrad went unforgivably beyond the reasonable limit as defined in the Bulgarian legislation and set by the international standards of the United Nations and the Council of Europe about the use of force and auxiliary devices by the police.

The Ombudsman thinks that whenever they use force, the policemen must always remember that the concepts of "absolute necessity" and "commensurate force" are the key to guaranteeing the right to life. Generally speaking, if it was necessary to use force, it must have been conforming to the situation. The following factors must be taken into account when a judgment is made as to whether the force used had been conformant with the situation:

- the type of the objective that the police operation is to achieve;
- the possible threats to the life and the body injuries;
- the extent of the risk that the force used may result in a loss of a human life.

The Ombudsman is convinced that the commanding staff of the Blagoevgrad Regional Directorate of the Interior should have planned and executed the arrest of Angel Dimitrov-Chorata in a way to minimize the use of force and prevent the loss of a human life. (The decisions of the European Court of Human Rights uphold the principle that the senior officers within the police are responsible for what their staff may have done (see Osman v. The United Kingdom, Decision of 28.10.1998 and Aktas v. Turkey, Decision of 24.04.2003.)

Not least, the Ombudsman is very much upset by the cases of police violence against citizens during their arrest or interrogation in places of custody mentioned and described by the 2005 US State Department Country Report on Human Rights Practices and by human rights watch organizations.

Given these circumstances the Ombudsman of the Republic of Bulgaria thinks that:

A.) What the police did during the arrest of Angel Dimitrov-Chorata violated the Bulgarian law.

B.) In addition to the Bulgarian law, it violated major human rights international standards of the United Nations and the Council of Europe about the use of force and auxiliary devices by the police.

On the basis of this fact-finding, the Ombudsman of the Republic of Bulgaria made the following

RECOMMENDATIONS AND PROPOSITIONS

To the attention of the Ministry of Interior

1. Conditions must be created in the Ministry of Interior for better efficiency in the fight against crime in strict compliance with the national legislation and the international standards of the United Nations and of the Council of Europe about the use of force and auxiliary devices by the police.

2. The Ministry of Interior must make an in-depth analysis of the reasons for the excesses in the use of force and auxiliary devices in the arrest of suspects and towards persons in custody and after a broad public discussion involving members from the Prosecution, the Bar and human rights watch organizations must put out its overall strategy and action plan to guarantee the respect for human rights by the law enforcement officials and to prevent unlawful police violence.

3. The Ministry of Interior must optimize its Standing Commission for Human Rights and Police Ethics by giving broader competences regionally and functionally in relation to the rules in the Code of Ethics for the officers with police functions in service of the Ministry of Interior.

4. The Ministry of Interior must develop a specialized, comprehensive and intensive training and retraining program for the officers and sergeants in the following areas: human rights; the ethical conduct of the policemen; lawful and commensurate use of force; non-discrimination, etc.

Note:
This Position was prepared on the basis of Art. 19, para 2 of the Law on the Ombudsman and Art. 9, para 1, subpara 3 of the Regulation of the Organization and the Activity of the Ombudsman. The Position is sent to the Ministry of Interior. Art. 28 of the Law on the Ombudsman and Art. 32, para 1 of the Regulation of the Organization and the Activity of the Ombudsman stipulate that within 14 days reckoned from the date of reception of the Position, the recommendations and propositions will have to be considered and the Ombudsman will have to be notified about the undertaken measures.

REPORT OF MR GINYO GANEV, OMBUDSMAN OF THE REPUBLIC OF BULGARIA
July 2007

ON: Inspections performed at places for the confinement of persons in lawful detention in the period February-May, 2007

The Ombudsman of the Republic of Bulgaria reckons that one of the major priorities in the activity of the institution is to perform active, competent and independent control on observing international human rights standards and the Bulgarian legislation regarding the penitentiary system. It is the Ombudsman's duty to defend the rights and freedoms of citizens who serve sentences at the penitentiaries (prisons, prison hostels and reformatories), as well as those under detention and under arrest.

The Protocol for Cooperation and Joint Action signed in February 2006 by the Ombudsman and the Minister of Justice provided a number of practical opportunities and mechanisms for control on behalf of the Ombudsman institution that have not been directly incorporated or stipulated in the Law of Execution of the Penalties, such as:

- Right of the ombudsman at any time to talk to convicted persons or persons under detention in the absence of third parties;
- The complaints and notifications addressed to the ombudsman in sealed envelopes cannot be subject to supervision by the administration;
- Organize inspections and reception rooms of the ombudsman institution at the penitentiary establishments;
- Dissemination of the ombudsman's publications at the places for the confinement of persons in lawful detention.

To fulfil the tasks envisaged in the Protocol for cooperation and joint action the ombudsman is following a specific program. Its major priorities are, as follows:

- Current monitoring of the applicable legislation and its compliance with the international standards for treating persons deprived of their freedom and detainees.
- Expanding the civil control over the observation of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Law of Execution of the Penalties.

The efforts along this line should lead to gradual, but not slow, replacement of the public prosecution supervision over the international and national legal documents by civil control, accomplished by the ombudsman institution of the Republic of Bulgaria.

- Organizing visits and temporary reception rooms at the penitentiary establishments and places for detention following a schedule outlined in an operational program approved by the ombudsman.

In view of the approved operational program for performing initial inspections of the ombudsman at places for the confinement of persons in lawful detention and state psychiatric establishments, experts from the ombudsman administration developed a methodology for the implementation of independent external control on the penitentiary system.

The methodology is in conformity with the internal and international acts and standards in the field of monitoring on the penitentiary system:

- the Convention for the Protection of Human Rights and Fundamental Freedoms;
- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- the Law of Execution of the Penalties;
- The Regulation for the Application of the Law of Execution of the Penalties;
- The Methodology for monitoring of the penitentiary establishments recommended by the Association for the Prevention of Torture and the standards of the European Committee for the for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- Recommendation No. Rec (2006) of the Committee of ministers of the member states regarding the European Prison Rules.

Subject of the inspections performed

- Humiliating, brutal or inhuman treatment of the persons deprived of freedom, and similar attitude among themselves;
- Protection measures;
- Facilities;
- Medical services.

Program of the visits during the first half of 2007

The program of the visits includes inspections at the prison in Pazardzhik, Sofia Central Prison, the prison in Stara Zagora, Juvenile Reformatory in the town of Boichinovtsi and the female prison in Sliven. The visits took place from the month of February till the end of April, 2007.

GENERAL FINDINGS

The impressions and findings of the inspecting team regarding the conditions for execution of the penalty "imprisonment" and the detention measure "arrest" at the prisons visited are, as follows:

Facilities

The facilities at the inspected prisons are worn-out and inadequate to the requirements of the Bulgarian and international norms and standards.

Most of the penitentiary places were built back in the middle of the 20th century. The buildings of the prisons are normally located within the boundaries of the regulation plans in towns and it is impossible or very difficult to expand their terrain.

Population density and cell facilities

The number of prisoners exceeds several times the capacity of the visited prisons in Pazardzhik, Sofia and Stara Zagora. Every prisoner has two square meters on average, which is far from sufficient in view of the international standards prescribing between four and seven square meters for each inmate. At the prison in Sliven (for women) and at the Juvenile Reformatory in Boichinovtsi (for adolescents) these international standards were met but this is due to the specific category of persons placed at these penitentiaries.

The cells and general premises are extremely old and worn-out. The cells at the prisons in Stara Zagora and Sliven as well as part of the cells at the prison in Pazardzhik do not have separate WCs and during the night the inmates have to use buckets to relieve their natural functions.

Due to overpopulation the penitentiary administration is not in a position to ensure the storage and use of the personal belongings of inmates allowed by the regulations in view of Appendix No 2 to Art. 61a, para 2 of the Law of Execution of the Penalties.

Food

Most of the inmates complained about the insufficient food, and its low-calorie and poor nutritive value. Each prisoner is allocated 1,36 BGN per day for food, which is far from enough.

Clothing

According to Art. 31, para 1, b and c from the Law of Execution of the Penalties, "the prisoners have a right to an individual bed, shoes and bed sheets…"

For years on end the prisoners have not had new supplies of clothes and shoes and they wear their own clothes, which is in contradiction with the regulation requirements.

The prison administration relies only on the good will of donors to be able to provide clothing to the underprivileged inmates. The Bulgarian Red Cross provides the most valuable support in this respect.

Recreation, sports, practicing hobbies and interests, exercising religion and cultural activities

All inspected penitentiaries allow the prisoners to stay in the open air for at least an hour, which meets the minimum requirements prescribed in Art. 33, para1, b and "a" from the Regulations for the application of the Law of Execution of the Penalties, as well as Art. 27.1 of Recommendation No. Rec (2006) of the Committee of ministers of the member states regarding the European Prison Rules.

All penitentiaries have special grounds for recreational and sports activities – volleyball, basketball, football and muscular sports. In most cases, however, the sports facilities are quite primitive. Some of the places have gyms but they are very miserably equipped. The situation is different at the female prison in Sliven, at

the open-type hostel in the village of Kazichene and the Reformatory in Boichinovtsi where they have indoor sport facilities furnished with modern fitness equipment.
The overcrowded facilities at most of the places have forced the penitentiary administration to close down the interest clubs and transform them into cells, which does not allow providing adequate and satisfying leisure activities to the inmates.

Libraries

All inspected penitentiaries have libraries. Their book-stock is definitely outdated – physically, as subject matter and assortment. Donations of books happen very rarely.

Exercising the right to religion

At all penitentiary establishments inspected by the ombudsman institution every imprisoned person can freely exercise his religion at the existing modest chapels. Service there is regular, conversions are not rare, and there are even weddings.

Everywhere the administration has provided opportunities for representatives of different religions to meet the prisoners if they wish. The inspecting teams were strongly impressed by the church at the Stara Zagora prison, which was built entirely thanks to the efforts of the penitentiary administration.

Cultural and leisure activities

Despite the insufficient resources, the prisons have managed to form dance, music and even drama circles. They also have guest artists and performers from the local cultural establishments.

All penitentiaries have cinema halls that have long ago stopped showing films (for objective reasons again). The inmates watch films on TV screens – at the cinema hall, in the corridors and in the cells.

The Stara Zagora prison governor deserves encouragement for his initiative to give awards to the imprisoned in the form of excursions to national historic sights and even a night at the local theatre.

Conditions for labour

Labour opportunities and employment options at the places visited are far from sufficient despite the efforts of the penitentiary administration.

Labour opportunities are mostly limited at the Central Penitentiary in Sofia (an exception is the prison hostel in Kazichene) and at the prison in Pazardzhik marking a tendency of further decrease. The reasons are understandable and explicable but this fact raises certain concerns because labour activities of the imprisoned persons is a major factor in the preventive and reintegration function of the “imprisonment” punishment (Art. 59 of the Law of Execution of the Penalties).

The reeducating and psychological effect labour activities have on the imprisoned persons has specific and natural dimensions, which can me easily noticed. An example of the positive effect of labour is the striking difference in the behaviour of inmates in penitentiaries recording high employment rates (Stara Zagora and Sliven) and those with low employment rates. Disciplinary offences of working inmates are quite less than those of unemployed ones; they have an optimistic view on life, their relationships with each other are tolerant and their communication with the penitentiary administration is normal.

The efforts of the Government Enterprise “Prisons Production” in pursuing its major goal – to preserve and improve employment opportunities – are far from sufficient.

Medical care

Medical care at penitentiary establishments is usually not part of the national health insurance system and is not provided in conformity with the Health Insurance Act. According to the acting statutory regulations the compulsory health insurance guarantees free access to medical help and care through a definite package of health activities, specified with regard to their type, scope and volume, as well as a free choice of service provider who has signed a contract with the regional health insurance fund (Art. 4, para 1).

The ombudsman has found that the freedoms of choice imprisoned persons are entitled to have been violated. This right is valid throughout the country and cannot be restricted by any geographical and/or administrative reasons (Art. 4, para 2 of the Health Insurance Act).

Medical care in the penitentiary system is usually carried out by staff appointed by order of Minister of Justice. Doctors, dentists, medical auxiliaries and nurses are employees of the Ministry of Justice and are subordinates of the General Directorate "Execution of Penalties".

At the same time the Ombudsman's inspections showed that doctors have no contractual relations with the National Health Insurance Fund, and for that reason they have not signed an individual contract required by the National Framework Agreement regarding the package of medical activities. Consequently, the relevant follow-up monitoring of their activities is not performed either. As a result, there is a large number of primary medical examinations (at the initiative of patients), but preventive care and dispensary treatment of chronically ill persons (i.e. genuine healthcare) is not carried out according to current medical standards approved by the Ministry of Health, and strongly low-grade criteria are applied instead. As a whole, imprisoned persons are not provided with the full package of medical care and services, guaranteed by the National Health Insurance Fund.

There are no medical records of the health insured persons subject to compulsory health insurance within the meaning of the National Framework Agreement, which impedes the subsequent follow-up of the health status of patients.

An example regarding the incomplete provision of medical care and services is the situation in the prison hostel in the village of Kazichane where the health service has only a medical auxiliary - an employee of the Sofia Central Prison. The principle of equal rights in using medical care and services by the prisoners has been violated, as reflected in Art. 2, item 2 and Art. 81, para. 1 and para. 2, item 1 and item 2 of the Health Act and Art. 5, item 5 of the Health Insurance Act since patients do not have direct access to a general practitioner, and their needs are determined by the medical auxiliary.

A Specialized Hospital for Active Treatment of imprisoned persons was established on the premises of the Sofia Central Prison providing medical care (along with the hospital in Lovech) to prisoners across the whole territory of the Republic of Bulgaria.

All medical personnel working in that hospital are also employees of the Ministry of Justice and have no direct relationship with the structures of the republican health insurance system.

The imprisoned persons needing hospital care are treated in the Specialized Hospital and in the hospital of the Ministry of Interior in Sofia in case the requirements of appropriate treatment exceed the capacity and competence of the Specialized Prison Hospital.

Hospital care is provided mostly separate and isolated from the national health insurance system, which is in violation of the requirement to ensure the right of free access of insured persons to medical care, stipulated in Art. 4, para. 1 of the Health Insurance Act through a package of health activities, specified with regard to their type, scope and volume, as well as a free choice of medical service provider.

The treatment of patients is not performed in accordance with the standards set for every disease or disorder by the relevant clinical path.

The equipment and furnishing of consulting rooms is insufficient and does not meet the requirements for operational medical equipment and furnishing valid for the general practitioners practices. The situation in the Specialized Prison Hospital on the premises of Sofia Central Prison is similar. This is also a consequence of the isolation of medical care in the units of the penitentiary system from the national medical system. When individual health insurance contracts are concluded the National Health Insurance Fund sets requirements for adequate technical equipment and furnishing, meeting certain standards of quality, quantity and configuration.

The situation in dental surgeries is quite different, and most of then are furnished with modern equipment. This contributes to providing better and more extensive dental care.

The pharmaceutical stores are usually part of the surgeries comprising the medical center. The surgery is adapted for this purpose, and it is furnished with a number of additional lockers to keep the medical supplies. The person responsible for the supplies, who runs and manages the store, is either the dentist or the medical auxiliary.

On the whole, the operation of the pharmaceutical stores, their management, the qualification of their staff, as well as the method of storage of medicines and access options to them completely contradict the requirements of the Law on the Medicinal Products in Human Medicine - Regulation No. 8 of 23.06.2000, SG, No. 54 of the year 2000. In this respect, these pharmaceutical stores are illegal. The only exception is the hospital pharmacy, opened on the premises of the Sofia Central Prison, which has been registered in accordance with the current statutory regulations.

These pharmaceutical stores are supplied with medicines and medical provisions centrally by order on behalf of the doctors in view of the stock availabilities and financial resources of the General Directorate "Execution of Punishments", Medical Care and Services Sector.

Along with the general characteristics of the health system at the penitentiary establishments, some specific elements become apparent in its separate divisions, namely:

The inmates in the close-type prison hostel in the village of Cherna Gora, with the cooperation of the Regional Health Insurance Fund - Stara Zagora, are officially included in the patient list of the general practitioner whose practice is located in the village of Cherna Gora. In this way they become part of the National Health Insurance system.

In the female prison in the town of Sliven prisoners are included in the national health insurance system by adding their names to the list of patients of the medical center in Sliven. The centre, which has a contract with the National Health Insurance Fund, provides medical care in the prison using the services of employed staff. In addition, the female prison uses the services of expert doctors – an obstetrician and pediatrician, also within the framework of the National Health Insurance Fund, respectively the Regional Health Insurance Fund, Sliven.

At the close-type Reformatory in Boichinovtsi the dentist has a contract with the National Health Insurance Fund.

On the whole, the inspection found that different sections of the medical structures of the separate prisons and hostels have been included in the republican Health Insurance system.

It follows from the above that there are no real obstacles for the integration of healthcare services across the entire penitentiary system into the National Health Insurance system, covering all possible places and sectors.

As a step in this direction it may be noted that the legal inconsistencies observed in the past regarding the prescription of medication to be paid entirely or partly by the National Health Insurance Fund, as well as specifying referrals for medical examinations by specialists have been partly remedied by the inclusion of relevant texts in the National Framework Agreement. For the year 2006 these were: Art. 37, para 2 for prescribing medication and Art. 119, para 7, item 2 for providing specialized pre-hospital medical care, covered by the National Health Insurance Fund. This measure has created opportunities for the imprisoned persons to exercise their health-insurance rights within the specified scope.

One of the major concerns in the operation of the medical services at prisons was the fact that most of the prisoners did not have health insurance rights at the moment of entering the penitentiary establishment. So, until their rights are restored within 15 months, the costs for medical care and medication are to be covered by the prison budget.

Education and training

Education and training is an important feature of penitentiary establishments. Education and professional qualification are of major importance for prisoners and their function is identical to the labour process.

In view of Art. 28.1 of the Recommendation No. Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, "Every prison shall seek to provide all prisoners with access to educational programmes …". According to Art. 68, para 1 of the Law for Execution of Penalties, "…at prisons and reformatories educational institutions have to be established in cooperation with the relevant authorities of the Ministry of Education and Science as proposed by the Ministry of Justice" (para 2), which will be financed and managed by the Ministry of Education and Science.

During the inspections the representatives of the Ombudsman found that only the prisons in Stara Zagora and Sliven and the Reformatory in Boychinovtsi have schools and support general education from 1st to 12th

grade. The school at the Reformatory in Boychinovtsi is financed by the Ministry of Justice, and the teachers also act as social inspectors.

The facilities of schools are very good. They have modern computer labs, vocational training facilities and language education in two foreign languages. There is no reasonable explanation why these opportunities are not used for training the prison administration as well.

It is a matter of concern that the percentage of illiterate prisoners has been increasing. In this respect, there is an obvious need to conduct literacy courses in all penitentiary establishments.

Contacts with the outside world

The administrations of the visited prisons have a different approach in providing the right of contacts with the outside world to prisoners.

Visits are scheduled in special premises, usually without partition walls between the prisoners and visitors (with the exception of Sofia Central Prison). In more specific penitentiary establishments (such as the female prison in the town of Sliven) there are convenient premises for inmates to meet with their children.

In some penitentiary establishments as, for example, the prison hostel in the village of Kazichene, prisoners are also allowed visits off the schedule. There is a separate special room for 24-hour visits only at Sofia Central Prison. The budget of the female prison has also allocated funds for furnishing a similar premise, but work on it has not started yet.

Phone calls are subject to regulations depending on the regime to serve the sentence. According to the statutory regulation prisoners are entitled to phone calls at their own expense with relatives in the direct line of descent or with their counsel. An exception to this rule is Sofia Central Prison, where the governor at his discretion has allowed inmates to make phone calls to all relatives, and to closer friends, although this does not comply with the stipulations of the law.

Most penitentiary establishments have access to cable television in the general premises, the cost being covered by the prison budget. In the prison in Stara Zagora there is cable television in the cells of sentenced to life imprisonment, and in Pazardzhik they have this option in all cells.

Protection measures

Registers

The findings of the team are that the records are maintained properly, they contain the necessary information and relevant documents. There is certain criticism regarding the lack of software and technical resources to assist the administration in registering and using the database. At present, references are made manually, which engages the working day of several employees and is a prerequisite for errors, loss of documents and information.

Disciplinary offences and penalties

The huge overpopulation in the visited prisons is the reason for the daily disciplinary offences, mainly related to interpersonal conflicts and attempts to bring in prohibited objects. This problem is most strongly obvious in Pazardzhik and Sofia. In the prison in Pazardzhik during 2006 the number of penalties imposed on inmates totaled 935, of which 335 were punitive cells. The number of penalties imposed could definitely lead to the conclusion that there is a violation of Art. 60.5 of the Recommendation No Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules on behalf of the prison administration for imposing single isolation as a “penalty in exceptional cases only”.

Filing complaints, signals and requests

The prison administration in all visited penitentiaries provides and guarantees the prisoners the right to lodge a complaint, including under Art. 37 of the Law for Execution of Penalties (in a sealed envelope). Everywhere it is a well-established practice to prepare a memorandum on each complaint as well as a written opinion by an inspector on every request filed. The number of court appeals regarding penalties is very low and the complaints settled by the court in favour of the claimant are quite few.

Administration and management of the penitentiary establishments

Financing

The administrative capacity, technical equipment, financing and labour conditions of prison staff do not correspond to the needs of the penitentiary establishments.

Administrative capacity

The number of prison wardens and social inspectors in the visited prisons is insufficient and in some of the prisons there are vacant positions. A major problem in this area is the competition recruitment procedure, introduced by amendments to the Law on the Ministry of Interior of 01.05.2006, which is rather an obstacle to finding people to occupy those posts, as it is intricate and long and does not in any way facilitate the recruitment of energetic and competent professional staff.

Prison governors are forced to cut rather than increase the number of jobs, due to the planned reduction of administration in Bulgaria. At some of the penitentiaries visited the inspecting team found serious problems in terms of the quality of work in the analysis and risk assessment, in planning sentences and preparation of various reports.

This aspect of the work of the administration is sometimes sketchy, the problems are simply identified and they are not further specified in detail and are seldom thoroughly analyzed. The analytical work in the prison in Sliven can be qualified as good, which is a prerequisite for individual approach in the psychological and social work with prisoners.

Technical equipment

The technical equipment of prisons is in very poor condition and does not meet the needs of prison administration. There is definitely an insufficient number of surveillance cameras and recording equipment, there are not enough metal finders and technical means of protection and prevention, as well as adequate protective equipment for prison wardens. For the last few years staff has not received uniforms.

Education and qualification of staff

The initial training of prison officers is performed at the school in the town of Pleven. There is no centralized education and training courses for prison administration.

Financing

The lack of adequate state funding in relation to penitentiary establishments is quite obvious.

A major problem is the centralization of funding and spending of budget resources. The introduced public procurement procedure and the centralization of supplies and poor efficiency in the work of the Government Enterprise “Prisons Production” seriously obstruct the operations. In practice, this centralization of supplies is not cost-efficient. In support of that finding is the fact that the food supplied to prisons is more expensive than the domestic production and the production in prisons themselves.

Centralization is also an inherent characteristic of the Government Enterprise “Prisons Production”, which collects and spends funds generated by business operations in penitentiary establishments. Due to that very reason a prison like that in Stara Zagora, which has registered the largest revenues, happens to be allocated resources which are several times less than those it has added to the fund.

Places of serving sentences in the case of juvenile delinquents

Serving an imprisonment sentence in the case of juvenile delinquents in Bulgaria must comply with the principle of protection of the best interests of children and young people.

The fundamental documents in administering justice and serving sentences in the case of juvenile delinquents are as follows:

- UN Convention on the Rights of the Child;
- UN Guidelines for the Prevention of Juvenile Delinquency (the Ryad Guidelines);
- UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);
- European Convention on the Exercise of Children’s Rights;

- Recommendation No. R_92_16 of the Committee of Ministers of member states on the European Rules on Community Sanctions and Measures;
- Recommendation No. 97_12 of the Committee of Ministers to member states regarding officers responsible for the execution of sanctions and measures;
- Recommendation of the Committee of Ministers to the member states on mediation in penal matters.

In Bulgaria minors serve imprisonment sentences in the prison in the town of Sliven - for juvenile girls, and in the Juvenile Reformatory in the town of Boychinovtsi - for juvenile boys.

One of the main concerns of serving an imprisonment sentence by juvenile delinquents is the lack of a universal system for the exchange of information between institutions. The findings revealed still another defect - the deficiency of specialized court panel to work with minors and mechanisms to protect the rights of minors during court proceedings. The establishment of such panels, as well as social services affiliated to the court, will provide greater flexibility in determining penalties and will create additional alternatives for minors.

During the inspection it was found that there is no established practice for Child Protection Departments to provide social reports to prison administration on convicted juvenile delinquents. Similar reports are not produced in penitentiary establishments either. The requirements of Art. 387 of the Criminal Procedure Code for examining magistrates to collect documents related to the education of minors are not fulfilled.

A serious concern is the exposure of juveniles to the harmful effects of the environment (the Home for Juvenile Girls in the Sliven prison is located next to the life imprisonment sector). There is an obvious risk of the so-called "infection with crime".

The problem with the custody of minors deprived of freedom in terms of medical care is specific and particularly alarming. In case there is a need of medical care and treatment requiring the informed consent of a parent or guardian of minors deprived of freedom, very often this kind of sanction cannot be provided.

In similar circumstances an appropriate treatment is undertaken, despite the legal risks and hoping only for a most favourable outcome. For minors and adolescents placed in homes for children deprived of parental care, this issue has been settled by Art. 128 of the Family Code, specifying that the guardian or trustee of a child with unknown parents will be the manager of the specialized institution where the child is placed.

The inspections identified the need for training of the staff in the system of implementing justice and penitentiary establishment focusing on juvenile delinquents.

Interaction of the inspecting team and prison administration

An important focus in carrying out the inspections is the establishment of active cooperation between the prison administration and representatives of the Ombudsman. In this regard the visits in penitentiary establishments are indicative of the interaction between the inspection team and the prison administration. Representatives of the Ombudsman received full cooperation and access to all sites, subject to inspection as well as privacy when conducting talks with the prisoners.

The efforts of the inspection team are aimed to acquainting prisoners with the Ombudsman's statutory prerogatives regarding the penitentiary system. These efforts result from the submitted complaints and reports filed from citizens deprived of liberty or detained under arrest, which by their nature fall within the competence of the judiciary and affect the acts and decisions of law enforcement authorities.

CONCLUSIONS

1. As a whole, the facilities at the inspected penitentiary establishments are old, worn-out, insufficient and do not meet the requirements of Bulgarian and international standards for serving imprisonment sentences.

2. Labour options and employment opportunities are far from sufficient in spite of the efforts of prison administration to find enough job options for inmates.

3. The Management of the Government Enterprise "Prisons Production" has not put enough effort in pursuing its major objective – to preserve and enhance labour options and employment opportunities.

4. Medical care and services are provided following strongly low-grade criteria and lack of efficient control on behalf of the relevant authorities.

5. Medical establishments and pharmaceutical stores across the penitentiary system as a whole operate in contradiction to the current statutory regulations.

6. Separate medical service sectors of penitentiary establishments have been integrated in the national health insurance system.

7. Serious concerns are raised regarding custody issues of juvenile delinquents deprived of freedom when they need medical care and treatment requiring the written consent of a parent or guardian.

8. Education and training is not an imperative characteristic of the penitentiary establishments. The deficiency of adequate literacy training courses is one of the prerequisites for the increasing illiteracy rate among the imprisoned persons.

9. Prison administrations approach differently the issue of granting the right of contacts with the outside word to inmates.

10. The overpopulation and low employment rate are one of the reasons for registering an increasing rate of disciplinary offences.

11. The administrative capacity, technical equipment, financing and working conditions of personnel do not correspond to the needs of the penitentiary establishments.

12. Serving imprisonment sentences by juveniles does not comply with the fundamental principle of observing the best interests of children and young people.

Based in the findings and conclusion, the Ombudsman of the Republic of Bulgaria makes the following

RECOMMENDATIONS

1. The Ministry of Justice and the General Directorate “Execution of Penalties” have to enhance their efforts in pursuing the objective to bring penitentiary establishments and reformatories up to the international standards complying with Bulgarian legislation in the field. Public-private partnership is a very appropriate form of achieving the required modernization and it should be definitely encouraged.

2. The Ombudsman finds that employment has a substation role in reeducating imprisoned persons. Along this line, the Ministry of Justice and the General Directorate “Execution of Penalties”, in cooperation with the Ministry of Finance should discuss feasible tax relief options for employers opening jobs for imprisoned persons, thus stimulating employment.

3. The Minister of Justice should strengthen the control on the operations of the Government Enterprise “Prisons Production” in view of achieving its major objective - to preserve and enhance labour options and employment opportunities.

4. The Ombudsman finds that the Ministry of Justice, together with the Ministry of Health, have to discuss possible amendments to Regulation No. 12 on medical care for imprisoned persons in compliance with the Medical Establishments Act and the Health Insurance Act thus ensuring the conformity of penitentiary medical care with Bulgarian and international standards in the field.

5. The Ministry of Justice, the General Directorate “Execution of Penalties” and the Ministry of Education and Science have to discuss the prospects of expanding education and training at penitentiary establishments. To achieve this it is necessary to enhance the literacy, training and qualification courses at these places cooperating actively with nongovernmental organizations.

6. The Ombudsman advises the Ministry of Justice and the General Directorate “Execution of Penalties” to consider the feasibility of introducing certain amendments to the Law on the Execution of Penalties and the relevant Regulation on its application, namely:

- Waive the restrictions for the pool of people whom the imprisoned persons can make phone calls to (Art. 27 of the Regulation for the application of the Law on the Execution of Penalties).
- Assign the prison governor as a guardian of juvenile delinquents serving imprisonment sentences entitled to give informed consent when inmates need medical care and treatment.
- Decentralization of prison hostels.

- Establish separate detention places for drug addicts in accordance with their specific needs.
- In Art. 37, para 2 of the Law on Execution of Penalties, include the ombudsman in the list of authorities the imprisoned person can send letters to in sealed envelopes.

7. The Ministry of Justice together with the Ministry of Interior and the Supreme Judicial Council are advised to consider the options of an accelerated development of a universal database system to facilitate administrative work and improve the efficiency of prison administration, police departments, probation offices and the judiciary.

8. The Ministry of Justice should undertake to update, enhance and intensify the qualification and prequalification programs of personnel in the penitentiary system. Special focus and attention is needed to probation officers.

9. The State Agency for Child Protection and the Ministry of Justice should make effort to collaborate more actively in developing efficient programs for reintegration in society of juvenile delinquents.

10. The administration at all penitentiary establishments have to implement international models in risk analysis and assessment, in planning sentence serving and preparing different types of reports.

The present report has been drawn on the authority of Art. 19 and Art. 22 of the Ombudsman Act. After it is publicly announced it will be sent to the Ministry of Justice, the General Directorate “Execution of Penalties, the Ministry of Education and Science, the State Agency for Child Protection, the Supreme Judicial Council, the Ministry of Interior, and the administrations of inspected penitentiary establishments.

By virtue of Art. 28 of the Ombudsman Act, the bodies and persons concerned by the suggestions and recommendations included in the Ombudsman’s report shall be obliged to consider them within a 14-day term and notify the Ombudsman about the measures and action taken.

National Assembly
Committee on Civil Society and Media

RE: Information Note of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Section III)

DEAR MR LYUTFI,

Within the framework of the post-monitoring dialogue between representatives of the Bulgarian authorities and representatives of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, the following additional remarks may be made on Section III. Independence of the media from the executive:

1. (paragraph 30) The independence of the Council for Electronic Media (CEM) has undoubtedly been a priority for the Bulgarian legislator, who has provided a number of guarantees in the procedures for the election, early termination of the credentials and decision-making by the body. The rotation principle of replacement of the composition of the CEM ensures objectivity and equality of its members and guarantees the proper use of the discretionary power vested in the body by law. The irremovability of the members of the body, as well as the incompatibility between the position they hold and their engagement in another activity, which may give rise to a conflict of interest, show in practice a good result. Incidentally, these special guarantees were elaborated and supported with the adoption of the Conflict of Interest Prevention and Disclosure Act and in the forthcoming adoption of the Lobbying Activities Bill.
It should be borne in mind that the independence of the Council for Electronic Media is a matter of public interest and subject to discussion in the mass media and among the civil-society organisations, which believe that a real independence of the CEM can be achieved through a change of the mechanism for election of the body, by limiting or eliminating the possibility of state bodies recruiting its members.

2. (paragraph 31) It is indeed a fact that major media are ruled by persons with important political influence, yet this circumstance should not be perceived as a sought-after effect or a targeted political consequence but rather as an objective state of affairs resulting from the absence of real civil-society mechanisms for the formation of public opinion or of citizens' readiness to participate in the management of public affairs. A participatory culture, however, cannot emerge without the participation of authoritative media and without a readiness of the mass media to cover the problems of the public, which makes them and their "rulers" important political factors. Within the context of Bulgaria, such an influence or impact should be understood as a public factor which is not equivalent to partisanship and is not charged with negative connotations. The steering of this process towards stability of citizens' participation and containment of public opinion manipulation presupposes efforts to stabilise civil society and encourage citizens' control as a corrective of the abuse of power, including among the managements of major media.

3. (paragraphs 32-33) The cases of violence and harassment against journalists should be contained by special measures in the area of home affairs and by increasing the public readiness to co-operate when such assaults are reported. Such a process, however, should not be subject to legislative intervention but to measures taken by the executive in co-operation with the citizens' organisations.
Along with that, consideration should be given to journalists belonging to a particular professional sphere and to the possibilities open to journalists' organisations through their rules of ethics and the practice of their application.

4. (paragraphs 34-35) The recommendations regarding future media legislation take into consideration the requirements for transposition of the EU directives and, if resources and political will are available, could be in two directions:
- drafting an omnibus organic media law, to ensure the sustainable development of the media and to provide additional guarantees for their independence from the executive, including guarantees against media group concentration and political and economic influence;
- drafting a law on audiovisual services, which establishes criteria for equality on the market and guarantees consumers' interests.

CHAIRMAN OF THE COMMITTEE ON CIVIL SOCIETY AND MEDIA
Ivo Atanassov

Council for Electronic Media

Dear Mr Lyutfi,

Further to your letter Incoming No. 013-38 of 14 January 2009, I am sending you an answer to the questions raised by Mr Holovaty in Section III:

According to the statutory instrument effective at present in the Republic of Bulgaria: the Radio and Television Act (*State Gazette* No. 138 of 24 November 1998), the Council for Electronic Media (CEM) is an independent specialised body which regulates radio and television broadcasting activities by means of registration or grant of licences for pursuit of radio and television broadcasting activities and through exercise of supervision over the activities of radio and television broadcasters as to compliance with this Act. In the performance of its functions, the Council for Electronic Media is guided by the public interest, protecting the freedom and pluralism of speech and information and the independence of radio and television broadcasters (Article 20 of the Radio and Television Act).

The Council for Electronic Media consists of nine members, of whom five are elected by the National Assembly and four are appointed by the President of the Republic. The National Assembly resolution and the presidential decree enter into force simultaneously. Thus, the CEM is constituted by the only two authorities elected by popular vote: the National Assembly and the President.

Next, the Radio and Television Act establishes a number of qualifications for membership of the CEM. Eligibility for membership of the Council for Electronic Media is limited to persons holding Bulgarian citizenship, who hold a degree of higher education and possess experience in the following spheres: electronic media, telecommunications, journalism, law or economics, and enjoy public authority and professional acknowledgement.

The following persons are ineligible for membership of the Council for Electronic Media:

1. any persons who have been sentenced to deprivation of liberty for premeditated indictable offences;

2. any sole traders, owners of the capital of commercial corporations, partners, managing directors, managerial agents or members of management and auditing bodies of commercial corporations and co-operatives.

3. any persons who have been on the full-time staff or part-time associates of the former State Security.

4. The combination of the quota principle in constituting the Council with the rotation principle of periodic replacement of members of the Council provides an additional guarantee of the independence of the CEM, since it is quite possible that such rotation may occur when the political forces in Parliament are in a different correlation and when another President is in office (as noted by the Constitutional Court of the Republic of Bulgarian in Judgment No. 10 of 25 June 1999 in Case No. 36 of 1998).

According to Article 29 of the Radio and Television Act, the members of the Council for Electronic Media are elected or appointed for a term of six years. The composition of the Council for Electronic Media from each quota rotates every two years. A person may not be member of the Council for Electronic Media for more than two successive terms of office.

Article 30 of the Radio and Television Act provides that the term of office of a member of the Council for Electronic Media is terminated prior to the expiry of the said term upon removal of the person from office or in the event of death. A member of the Council for Electronic Media is removed from office by a decision of the Council for Electronic Media only in the following cases:

1. submission of a letter of resignation to the Chairperson of the Council for Electronic Media by the member concerned;

2. upon permanent actual inability to discharge his or her duties in the course of more than six months;

3. upon establishment of incompatibility with the requirements of this Act;

4. upon entry into effect of a sentence imposing a penal sanction of deprivation of liberty for a premeditated offence.

The decisions on an early termination of a term of office of a member of the CEM are appealable before the Supreme Administrative Court of the Republic of Bulgaria.

The effective Radio and Television Act does not provide a possibility for the authorities which have elected or, respectively, appointed the members of the CEM to release them prior to the expiry of their term of office, which, too, guarantees the independence of the regulator and protects public interest.

The Council for Electronic Media exercises supervision over the broadcasting activities of radio and television broadcasters, including the activities of the national public-service broadcasters: the Bulgarian National Television (BNT) and the Bulgarian National Radio (BNR), solely with regard to:

1. compliance with the principles covered under Article 10 (1) and the proportion referred to in Article 10 (2) and (3) of the Radio and Television Act;

2. compliance with the requirements covered under Article 6 (3) and Article 7 of the Radio and Television Act;

3. coverage of the elections of state bodies and bodies of local self-government;

4. compliance with the requirements regarding advertising and radio and tele-shopping in the broadcasts of radio and television broadcasters;

5. conformity to the standards regarding charitable activities and sponsorship;

6. safeguarding of the secrets in radio and television broadcasting activities as provided for by the law;

7. compliance with the requirements as to broadcasts addressed to infants and minors;

8. information about decisions of the institutions administering justice and other state bodies in the cases provided for by the law;

9. protection of consumer rights;

10. technical quality of broadcasts and programme services;

11. compliance with any restrictions as may be provided for in the law, in the licences and in the effective international treaties to which the Republic of Bulgaria is a party;

12. compliance with the terms and conditions of the radio and television broadcasting licences.

According to Item 2 of Article 32 (1) of the Radio and Television Act, the CEM elects and removes the directors general of the BNR and the BNT. The CEM endorses the members of the management boards of the BNR and the BNT by a qualified majority (Item 3 of Article 32 (1) of the Radio and Television Act). The term of office of the directors general and of the members of the management boards of the BNR and the BNT is three years. This term of office may be terminated prior to its expiry on the grounds applicable to early termination of the term of office of a member of the CEM.

The obligations and the public-service nature of the BNT and the BNR are clearly defined in Article 7 of the Radio and Television Act. Besides this, in more general terms the nature of the public-service radio and television broadcasters is regulated in Article 6 of the same Act.

The Radio and Television Act guarantees the independence of the radio and television broadcasters, including the independence of the public-service broadcasters and of their broadcasting activities, from political and economic interference through its overall framework, and does not admit programme service censorship in any form whatsoever.

Journalists' freedom to express opinions is guaranteed in Article 11 of the Radio and Television Act. With a view to ensuring editorial independence, according to Article 11 (5) of the Radio and Television Act, editorial statutes for work in the sphere of current affairs may be agreed between the owners and/or management bodies of radio and television broadcasters and the journalists who have concluded contracts with them. An editorial statute must contain specific definitions and criteria for ensuring the freedom and personal accountability of journalistic work in accomplishing the assignment, the protection of journalists, the

professional and ethical standards of journalistic activity in the respective radio and television broadcasters etc.

The BNT and the BNR, as national public-service broadcasters, are independent in the performance of their public functions conferred on them by the Radio and Television Act, and they develop their programming policy independently.

A draft of an Act to Amend and Supplement the Radio and Television Act has been laid before the National Assembly of the Republic of Bulgaria, with a view to bringing it into conformity with the provisions of the Electronic Communications Act. The main objective of the bill is to create a statutory framework for the introduction of digital terrestrial television broadcasting. The new tests are discussed and debated at the Civil Society and Media Committee, after which they will be brought before the full house for conclusive adoption.

In conclusion, I would like to emphasise that the effective Bulgarian legislation creates conditions for full enjoyment of citizens' constitutionally guaranteed right to information and guarantees the inadmissibility of political and economic pressure upon the performance of the activities of the regulatory body and the public-service media.

Chairperson of the CEM
Assoc. Prof. Dr Margarita Pesheva