ANNUAL REPORT

OF THE MINISTER OF JUSTICE FOR THE EXECUTION OF THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS ON CASES AGAINST BULGARIA IN 2015

/Adopted by CM Decree No. 358 dated 12.05.2016/

INTRODUCTION

This third report for the execution of the judgments of the European Court of Human Rights on cases against the Republic of Bulgaria was prepared in implementation of the resolution of the National Assembly adopted on 21 September 2012, which obligates the Minister of Justice to prepare and submit to the Parliament an annual summary report on the execution of the judgments of the European Court of Human Rights (”ECHR”, “the Court”). Republic of Bulgaria ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (”ECHR”, “the Convention”) in 1992 and accepted the Court’s jurisdiction by virtue of this ratification. Under Art. 46 of the Convention, Member States have an international legal commitment to comply with the final judgments of the Court finding violations of the Convention. The adoption of the necessary execution measures is supervised by the Committee of Ministers of the Council of Europe (“CM”, “Committee of Ministers”). The member states have a legal obligation to remedy the violations found but enjoy a margin of appreciation as regards the means to be used.

The topics of this report are divided into three parts. The first part of the report contains information on ECHR judgments against Bulgaria in the execution phase for 2015, marks some positive changes in legislation and case-law as a result of convicting Court judgments, as well as the judgments that were executed during the year.

The second part of the report addresses issues that require taking additional measures. This part of the report has been prepared based on judgments, resolutions and other documents of the Committee of Ministers and the Department for the Execution of Judgments of ECHR of the Council of Europe.

The third part of the report, for completeness and for clarity about the relationship between the effective execution of judgments and new convicting judgments against Bulgaria, presents updated statistics on the number of convicting judgments against Bulgaria for the last year, the number of pending applications before the ECHR, as well as a summary of some ECHR judgments delivered during the year, which deserve to be mentioned.

PART ONE

COMMITTEE OF MINISTERS

EXECUTION OF JUDGMENTS OF ECHR

1. INFORMATION FROM THE SECRETARIAT OF THE COMMITTEE OF MINISTERS FOR 2015

As evident from the data provided by the Department for Execution of Judgments of ECHR supporting the Committee of Ministers, at the end of 2015, the total number of Bulgarian judgments at the stage of execution is 272, about 90 of which are precedents (judgments which present a separate issue under the Convention, not one repeated in other judgments against Bulgaria). For comparison, at the end of 2014, the total number of judgments was 325, and the precedents were 95.

In 2015, the total number of new judgments for execution on Bulgarian cases sent for supervision by the Committee of Ministers was 26.

121 of the judgments supervised by the CM are related to the excessive length of proceedings, as in 2015, the supervision of 56 of them was completed (pilot judgments *Finger* and *Dimitrov and Hamanov* some judgments from the groups *Kitov* and *Dzhangozov*).

In 2015, the supervision on a total of 79 judgments and friendly settlements was finalized completed, 14 of which were precedents. For comparison, in 2014, supervision was finalized regarding 58 judgments and friendly settlements, 16 of which were precedents.

2. SHORT OVERVIEW OF JUDGMENTS THE EXECUTION OF WHICH WAS COMPLETED, AS WELL AS OF JUDGMENTS ON THE EXECUTION OF WHICH SIGNIFICANT PROGRESS WAS NOTED

A. Relevant judgments

23 years after the ratification of the Convention, a number of reforms were carried out in the national legal system, many of which were directly caused by the ECHR convicting judgments against Bulgaria. Some of the more significant measures taken under the execution of ECHR judgments were observed in the previous two annual reports - 2013 and 2014.

The obligation of Republic of Bulgaria under Art. 46 (1) of the Convention for execution of the ECHR final judgments includes individual measures - payment of compensation awarded and other measures to put an end to a violation and erase its consequences so that *restitutio in integrum* can be achieved, as far as possible (e.g. reopening of court proceedings, where necessary). The obligation of the state to execute the judgments of the ECHR also includes the adoption of general measures with preventive effect regarding similar violations. The aim of these measures is to prevent future violations of the Convention. Once the Committee of Ministers considers that the member state has fulfilled these obligations and has taken the respective individual and general measures, it closes the case with a final resolution.

As mentioned above, in 2015, the Committee of Ministers closed the supervision of the execution of 79 judgments and friendly settlements, 12 were precedents. One part of the

judgments on which supervision was closed during the year concerns isolated cases of violations of the Convention, while the others concern serious and repeated problems in the Bulgarian legal system and they should be mentioned:

a) Undoubtedly, the first thing to be noted is the completion of supervision on the execution of 56 judgments finding violation of the right to a fair trial within a reasonable time, as well as the judgments *Dimitrov and Hamanov v. Bulgaria* and *Finger v. Bulgaria* (the first two pilot judgments against Bulgaria).

The issue of the effectiveness of administrative and judicial mechanism for compensating of the affected persons by the so-called "slow justice" under the Judicial System Act (JSA) and the State and Municipality Responsibility for Damages Act (SMRDA) was subjected to detailed assessment by the Committee of Ministers, which confirmed that domestic remedies introduced in 2012 as a result of the pilot judgments have produced results.

The fifty-four other judgments, supervision of the execution of which was closed, were associated with delays due to the large number of hearings before civil courts, delays before the cassation instance or long intervals between hearings before criminal courts less busy at the time. Currently, the causes for these delays have been overcome to a great extent. In the group *Kitov v. Bulgaria* and *Dzhangozov v. Bulgaria*, however, judgments in which the problems identified by the ECHR concern the length of proceedings before the busiest courts, delays in pre-trial proceedings and lack of effective acceleration tool for criminal cases in the two stages of the criminal process still remain under supervision. These problems remain unresolved for the moment.

Regarding the functioning of the internal compensation mechanism under JSA and SMRDA, it should be noted that in 2015, the Inspectorate with the Supreme Judicial Council sent to the Minister of Justice a total of 569 applications under this procedure. 412 applications of them (justified and unfounded) have been examined on the merits. 180 settlements have been reached[1]. Another 102 settlements have been reached on 90 applications received in the Ministry of Justice before 2015. In conclusion, a total of 282 settlements on 266 applications were reached in 2015.

In 2015, a total of 794,720 BGN were paid as compensation for delayed justice.

b) Supervision of the execution of most judgments in the group *Al Nashif v. Bulgaria* was completed (facts of the case date back to the period between 1999 and 2003), relating to the implementation of the Foreigners in the Republic of Bulgaria Act (FRBA) and judicial review in the expulsion of foreigners. Despite the legislative amendment in FRBA, however, new problems appeared. The remaining outstanding issues (see below in Part II of the report) will continue to be considered within the group *C.G. and others v. Bulgaria.*

c) Supervision of the execution of two judgments concerning the refusal of the authorities to deduct VAT was also completed (*Bulves v. Bulgaria* and *Business Support Centre v. Bulgaria*). Following the amendment of the VAT Act in 2007 and the subsequent judgment of the ECHR on the admissibility of the application *Atev v. Bulgaria*, it seems that similar problems would not arise.

[1] On 176 applications

d) Amendments to the relevant legislation – the Gatherings, Meetings and Manifestations Act and the practice of the administration and courts – led to completion of the group *OMO Ilinden and Ivanov v Bulgaria* (2) where the ECHR found a violation of the right to peaceful assembly under Art. 11.

e) Following amendment of texts of the Criminal Procedure Code and case-law, supervision of the cases *Pfeifer v. Bulgaria* and *Prescher v. Bulgaria* concerning the imposition of a ban on leaving the borderlines of the country due to pending criminal proceedings against the applicants was completed.

f) The supervision of the execution of the judgment *Asen Kostov v. Bulgaria* finding a problem with excessive serving of the imposed punishment was completed. The Committee of Ministers has agreed that in the legislation – the Execution of Penalties and Detention in Custody Act (EPDCA) and the Criminal Procedure Code (CPC) – sufficient safeguards have been established which could prevent similar problems.

g) Following amendment of the relevant national legislation (CPC) and the case-law, two judgments on the cases *Raykov v. Bulgaria* and *Zdravko Stanev v. Bulgaria* concerning access to legal aid in criminal cases were also closed.

f) Following the relevant amendments to the CPC and the Ministry of the Interior ACT (MoIA), the supervision on the case *D.M.T. and D.K.I. v. Bulgaria* concerning the long suspension from office during an investigation and the inability under the MoIA to hold another position was also completed.

B. Review of compliance of draft laws with the **European Convention on Human Rights** (the Convention)

The obligation to review the draft regulations for compliance with the European Convention is provided for in paragraph 9, letter "c", ii of the Brighton Declaration in 2012 and reaffirmed in the Declaration adopted at the High-Level Conference of Member States of the Council of Europe in Brussels in 2015 (letter C, paragraph 1 "d" of the Action Plan of the Declaration[2]).

The report for 2014 noted that a number of member states to the Convention have an effective mechanism for regular ex ante control of the compliance of draft laws with the Convention, but such a mechanism has never functioned in Bulgaria.

In 2015 was drafted legislative proposal for a national mechanism for review of compliance of the domestic legislation with the Convention, included in the Act on Amending and Supplementing the Regulations Act. The draft act was was adopted by the National Assembly September 2015. The proposal provides for each draft law to be accompanied by a verification of compliance with the Convention and the European Court of Human Rights' case-law.

PART TWO

[2]"… take appropriate action to improve the verification of the compatibility of draft laws, existing laws and internal administrative practice with the Convention, in the light of the Court's case-law;"

OVERVIEW OF JUDGMENTS IN WHICH MEASURES FOR THEIR EXECUTION WITHIN THE MEANING OF ART. 46 OF THE CONVENTION HAVE NOT YET BEEN TAKEN

Judgments against the Republic of Bulgaria posing the most serious problems are combined into 12 groups and are examined by the Committee of Ministers (CM) in an "enhanced supervision procedure"[3], as follows:

1. group *Kitov v. Bulgaria* and group *Dzhangozov v. Bulgaria* – length of criminal and civil proceedings and lack of an effective remedy;
2. group *Nachova v. Bulgaria* – cases of death or injuries caused by inappropriate use of firearms by police officers or military police officers and inefficient investigation;
3. group *Velikova v. Bulgaria*, *Shishkovi v. Bulgaria* – death or injuries caused by unreasonable or excessive use of force by police officers and inefficient investigation;
4. group *Ekimdzhiev v. Bulgaria* – lack of sufficient safeguards in the use of special intelligence means;
5. *Neshkov and others v. Bulgaria* (pilot judgment), group *Kehayov v. Bulgaria* – poor conditions in places of detention, automatic imposition of a special regime for serving the punishment of life imprisonment without parole and life imprisonment, lack of effective domestic remedies;
6. group *C.G. and others v. Bulgaria* – deficiencies of judicial review in the expulsion of foreigners on the grounds of national security, lack of a remedy with a suspensive effect in case of complaints relating to a risk of inhuman treatment or a risk for the life in the host state, etc.;
7. group *Stanev v. Bulgaria* (judgment of the Grand Chamber) and *Stankov v. Bulgaria* – lack of guarantees upon placement in institutions of people with disabilities, lack of opportunity for a judicially limited and incapacitated person to request from the national court to repeal the guardianship, etc.;
8. judgment *Baltadzhi v. Bulgaria* (the last judgment of the group *Al-Nashif v. Bulgaria*, the execution of which is still under supervision) – a problem with individual measures, in the process of gathering information;
9. judgment *Yordanova and others v. Bulgaria* – lack of consideration of the proportionality of removal orders of state or municipal property;
10. judgment *Nencheva and others v. Bulgaria* – death of children occurred in the Home for Children with Severe Mental Disabilities in the village of Dzhurkovo and ineffective investigation of the causes of death;
11. judgment *OMO Ilinden and others v. Bulgaria* – violation of the freedom of association due to unjustified refusals to register the applicant association;
12. in 2015, enhanced supervision was also appointed to the judgment *S.Z. v. Bulgaria*, in which the ECHR found that there was a systemic problem with the effectiveness of investigations of crimes involving violence committed both by the state representatives and by private law subjects.

[3] The reason for the execution of a judgment of the ECtHR to be placed under enhanced supervision of the Committee of Ministers may be related to the need to take urgent individual measures in respect of the applicants or to the identification by the Court or the Committee of Ministers of a structural and/or complex problem within the national system. As the name itself suggests, these judgments are subject to a strengthened and more intensive supervision and are periodically included in the agenda of meetings of the Committee of Ministers for discussion.

In addition to these groups, a number of judgments have been combined into groups in a standard procedure of supervision or are single or isolated cases.

The most serious problems found in judgments against Bulgaria of the ECHR are presented below. In some parts, the report repeats the findings of the reports from 2013 and 2014, as these problems have retained their relevance. Problems are identified both in judgments classified "under enhanced supervision" and in judgments in the standard procedure.

1. OVERCROWDING AND POOR CONDITIONS IN PLACES OF DETENTION AND REMEDIES AGAINST THESE VIOLATIONS (ART. 3)[4]

A) In the period 1995-2015, the delegations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe visited all bulgarian prisons (except one), as well as a large number of pre-trial detention facilities. All visits resulted in the establishing serious deficiencies in the places of detention and repeatedly repeated recommendations to overcome the problems. As a result of the lack of decisive actions by the Bulgarian state in this regard, its complete or partial failure to implement the CPT's recommendations and the continuing deterioration of the situation of inmates, on 26 March 2015 the CPT made a public statement (a measure that is taken in exceptional cases) identifying in a summarized form the problems and encouraging the Bulgarian authorities to take the necessary emergency measures.

Shortly before that, on 27 January 2015, the ECHR delivered the pilot judgment *Neshkov and others v. Bulgaria*, and found violation of Art. 3 – Prohibition of inhuman and degrading treatment, and of Art. 13 – Right to an effective domestic remedie – of the Convention. The ECHR ruled that in Bulgaria, there was a systemic problem with poor conditions in places for deprivation of liberty and a lack of effective remedies (preventive and compensatory) against these conditions. This judgment is not an isolated case and summarizes the conclusions made in several previous judgments against Bulgaria, which found the same problem. These judgments are united in the group *Kehaiov v. Bulgaria*, the execution of which is monitored by the Committee of Ministers to the Council of Europe under an enhanced procedure. The judgment *Neshkov and others v. Bulgaria* gives guidance on how to be executed and prescribes a deadline of 18 months for adoption of an effective preventive and compensatory remedy (paragraph 290 of the judgment). The deadline will expire on 1 December 2016.

It should be emphasized that the effectiveness of remedies, particularly of the preventive remedy, is inextricably linked to the successful adoption of general measures to menage with overcrowding and poor material conditions in places for deprivation of liberty. Currently, it is exactly the situation in the places for deprivation of liberty that is the main obstacle to the effectiveness of possible preventive measure because of the lack of places offering adequate conditions of detention. Taking into account that the effectiveness of each remedy depends mainly on the effectiveness of the measures taken to solve the main problems of overcrowding and poor material conditions, efforts should be aimed at improving the material conditions and solving the problem of overcrowding in places for deprivation of liberty.

[4] Neshkov and others v. Bulgaria (pilot judgment) and group of judgments *Kehayov v. Bulgaria*

For implementation of the CPT's recommendations and ECHR's judgments, a working group was established at the Ministry of Justice in May 2015. In the period May-October 2015, the working group focused its efforts on preparing the draft act amending and supplementing the Execution of Punishments and Detention in Custody Act, the Criminal Code, the Criminal Procedure Code and the State and Municipality Responsibility for Damages Act (hereinafter "amendment of the EPDCA, etc."). The draft was published on the website of the Ministry of Justice in October 2015 and disseminated to the relevant authorities and organizations for statement on the matter. Its public discussion continues at the present time. The draft act addresses the main problems identified by CPT and the judgments of the ECHR, as indicated below.

Meanwhile, at its 1236-th meeting held on 22-24 September 2015, the Committee of Ministers of the Council of Europe (CM) examined the measures undertaken by the Bulgarian state. In a resolution adopted at the meeting, the CM underlined the need for introduction of an effective domestic remedie by 1 December 2016, performance of repairs and provision of the necessary resources for this, and noted with interest the progress in drafting legislative proposals to overcome the problem of overcrowding. CM also underlined the need for proper medical care in places for deprivation of liberty, as well as the provision of sufficient number of personnel. Measures to execute the judgment *Neshkov and others* and the group of judgments *Kehayov* were examined by CM during the 1250-th meeting held on 8-10 March 2016.

CM adopted a very positive resolution encouraging national authorities to adopt the legislative amendments prepared in pursuance of the judgment Neshkov, as well as the long-term strategy to overcome with the overcrowding and poor conditions in places for deprivation of liberty.[5]

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[5] *1250th meeting – 8-10 March 2016*

Neshkov and others and Kehayov group v. Bulgaria (Applications No. 36925/10, 41035/98)
Supervision of the execution of the Court's judgments
CM/Inf/DH(2011)45, CPT/Inf (2015) 44, DH-DD(2016)25, DH-DD(2016)25add, DH-DD(2015)755, DH-DD(2015)433, DH-DD(2014)1490, CM/Del/Dec(2015)1236/6
Decisions

The Deputies

1. strongly encouraged the Bulgarian authorities rapidly to adopt the legislative amendments and other promising measures that they elaborated in response to the pilot judgment *Neshkov and others* and to the public statement of the CPT adopted on 26 March 2015; invited the authorities to integrate these reforms into a long term strategy aimed at combating prison overcrowding and poor material conditions of detention;

2. recalled that improving conditions of detention and reducing prison overcrowding are vital for ensuring the proper functioning of the remedies, in particular the preventive remedy, which have to be put in place before 01/12/2016 in response to the *Neshkov* pilot judgment; invited the authorities to inform the Committee of the progress made in these areas by 30/04/2016;

3. as concerns prison overcrowding, noted with satisfaction the intention of the Bulgarian authorities to reassess the accommodation capacity of their penitentiary system on the basis of the CPT standards and invited them rapidly to adopt all the measures foreseen to combat overcrowding; invited the authorities also to provide information on the impact of the measures adopted to facilitate access to out-of-cell activities;

b) The first problem identified in the judgment *Neshkov and others* and in most judgments of the group Kehayov is linked to the poor material conditions and overcrowding in the places for deprivation of liberty. Also, in some of its judgments, for example *Iordan Petrov v. Bulgaria* and *Chervenkov v. Bulgaria*, the ECHR found violations of the Convention due to the cumulative effect of the poor conditions in the places for deprivation of libertyand the automatic application of the special regime for serving sentences of life imprisonment and life imprisonment without parole. In those judgments, the Court criticized in particular the automatic application of the special regime of serving sentences of life imprisonment and life imprisonment without parole under the Arts. 61 and 198 of the EPDCA for period of 5 years and without the possibility of individual assessment of the need for application of such a measure before the expiry of this period[6].

In a judgment of 2014 in the case *Harakchiev and Tolumov v. Bulgaria*, the ECHR found that the cumulative effect of the special regime of serving the sentence, the poor material conditions of detention and the period during which the applicants have lived in these conditions (respectively twelve and fourteen years respectively) leaded to a violation of Art. 3 of the Convention. This judgment also affects the punishment of life imprisonment without parole, in the present case served by one of the applicants. According to the Court's case-law, for this punishment to be in accordance with Art. 3 of the Convention, it should be possible for it to be reduced. In Bulgaria, such reduction can be achieved through the President's right to pardon. The Court concluded that in Bulgaria until 2012, that punishment *de facto* could not be reduced due to the lack of guarantees for the exercise of the right of the President to pardon. The Court considered that after 2012, such guarantees already exist and the applicant's punishment was *de facto* "reducible". However, the poor material conditions and the special regime of serving the sentence limit the possibility for the detainee to reform and therefore to reduce his sentence.

In terms of overcrowding, the draft amendment of the EPDCA, etc. contains rules on the initial allocation of prisoners and the assignment of more powers in this area to the authorities responsible for execution of punishments, a possibility for the authorities for execution of punishments to transfer prisoners based on overcrowding as well, new rules and a procedure for early parole. In respect of the special regime, it is envisaged that after the

4. as concerns material conditions, noted with interest the information related to the on-going or envisaged renovation work and reiterated their invitation to the authorities to proceed rapidly with the urgent renovations foreseen for 2016 and to secure adequate funding for this purpose;

5. noted, in addition, with interest the reform envisaging the creation of a confidential medical file for each detainee and reiterated their invitation to the authorities rapidly to take concrete measures to ensure that inmates receive proper medical care and that there are sufficient numbers of health professionals;

6. as concerns the reform of the "special regime", invited the authorities to clarify whether the current reform envisages the possibility for detainees to request, on their own initiative, a review of the regime as it applies to them and whether it is envisaged to apply this reform in respect of persons accused of offenses punishable by a life sentence;

7. recalled that no further individual measures are necessary in 19 older cases and that the same conclusion applies in respect of the situation of the applicants Chervenkov, Tzekov, Zlatev, Neshkov, Tolumov and Manolov; invited the authorities to provide additional information on the individual measures concerning the applicants Harakchiev and Halil Adem Hasan, as well as in the case of *Iordan Petrov* as concerns the fairness of the criminal proceedings against the applicant after their reopening.

[6] See paragraph 128 of the judgment *Iordan Petrov* and paragraphs 69 and 70 of the judgment *Chervenkov*.

expiry of one year from serving the sentence, an assessment must be made on the necessity of changing the regime, as the convicted person will be able to appeal an unfavorable result before an administrative court. Moreover, a new assessment will be made every six months on the grounds for continuing the special regime. Along with this comes an opportunity for the prison director to allow persons sentenced to life imprisonment and life imprisonment without parole to participate in various activities with other inmate in order for the negative effects of prolonged isolation to be minimized.

c) The second problem identified in *Neshkov and others* in a number of judgments of the Court from the group *Kehayov* concerns the lack of effective domestic remedies in relation to the poor conditions of detention. According to the Court's case-law under Art. 13 of the Convention, the state has to provide a compensatory and a preventive remedy against violations of Art. 3 of the Convention relating to poor conditions of detention.

It should be pointed out that the current procedures for examination of claims of prisoners for damages resulting from poor conditions of detention in accordance with Art. 1 of the SMRDA was declared ineffective by the judgment *Neshkov and others.* The deficiencies of the current practice found are: lack of clarity on what specific acts or omissions needed to be established by the claimant for his claim to be successful (paragraph 195); the very formalistic way of applying the rule *affirmanti incumbit probatio* failing to recognize the difficulties the inmate may encounter in proving his allegations (paragraph 196); the assessment of the conditions of detention in light of the domestic rules governing particular aspects of the conditions of detention rather than in terms of the cumulative impact of these conditions on the detained person by reference to the general prohibition of inhuman and degrading treatment laid down in Art. 3 of the Convention (paragraph 197); the refusal to accept the arguable presumption that the poor conditions of detention cause non-pecuniary damages to the detainee as required by the ECHR case-law (paragraph 198); application of regulations governing the limitation of actions in a way that did not take account of the continuous nature of the placement in poor conditions (paragraph 199).

The proposed changes of the SMRDA provide for overcoming these shortcomings by introducing a specific legal tool for prisoners and detainees for compensation of damages resulting from a breach of the prohibition of torture, inhuman or degrading treatment by the specialized bodies on the execution of punishments stipulated explicitly in a new version of Art. 3 of the EPDCA.

Also, in the judgment *Neshkov and others* was found that presently, there is no effective preventive remedy against poor conditions of detention and overcrowding in the Bulgarian legal system. A preventive remedy is essentially a procedure by which the prisoner can achieve cessation of a situation which violates his rights guaranteed both under Art. 3 of the Convention and the proposed new redaction of Art. 3 of the EPDCA, para. 2 of which also covers mild cases of placement in adverse conditions in places of detention.

In the pilot judgment, the ECHR considered various options for establishment of such a procedure. One of these options is the adaptation of proceedings for protection against unfounded acts and omissions of the administration in the Administrative Procedure Code (APC) (Arts. 250 et seq. and 256-257) to a special procedure for dealing with requests from prisoners stating the approach of courts to such requests, the defendants, the deadle and the effective execution of judgments. Meanwhile, in its judgment, the ECHR specified

efficiency criteria for a preventive remedy, as the legislative proposals are based precisely on these criteria.

It should be pointed out that with the amendment of the EPDCA, etc., prisoners and detainees can use this procedure both for violations of fundamental rights that fall within the scope of Art. 3 of the Convention and for minor violations (acts and omissions) by the prison administration. The aim is to standardize the procedure for complaints of prisoners and detainees related to unlawful acts and omissions of the administration authorities.

In conclusion, it should again be emphasized that the proposed provisions in the amendment of the EPDCA, etc. follow closely the recommendations of the judgment *Neshkov and others.*

2. DEFICIENCIES OF THE INVESTIGATIONS CARRIED OUT IN CASES OF DEATH AND ILL-TREATMENT. VIOLATIONS OF THE RIGHT TO LIFE AND THE PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT. (ART. 2 AND ART. 3 OF THE CONVENTION)[7]

A. In a series of judgments against Bulgaria, the ECHR found violations of the Convention under Arts. 2 and 3 protecting fundamental rights such as the right to life and the prohibition of torture and inhuman treatment. These judgments are combined into three broad groups: *Nachova v. Bulgaria* (judgments relating to deficiencies in the legislation that allowed the use of a weapon that is not absolutely necessary by the police or the military police, and the lack of effective investigation of death or inhuman and degrading treatment in this respect); *Velikova v. Bulgaria* (judgments relating to the excessive use of force by the police or supervisory staff in places of detention, and ineffective investigation in cases of death or inhuman treatment in this respect); and *Angelova and Iliev v. Bulgaria* (judgments concerning the lack of effective investigations in cases of death, injury, rape caused by private individuals).

Particular attention should be paid also to the judgment *S.Z. v. Bulgaria* which entered into force on 3 June 2015. There, the Court held that the Bulgarian state had violated the applicant's rights guaranteed by Art. 3 of the Convention in its procedural aspect by not conducting an effective investigation of rape, kidnapping and incitement to prostitution, and that the criminal proceedings had been excessively lengthy – from 1999 to 2014. The Court found a systematic problem with the effectiveness of criminal proceedings in Bulgaria, referring to a number of similar judgments from the group of cases *Velikova* or the group of cases *Angelova and Iliev*. The Court acknowledged the complexity of the established structural problem and recommended that the Bulgarian State to identify, in cooperation with CM, the causes for a systemic problem, as well as to take appropriate general measures to prevent future similar violations, in order not to leave such crimes unpunished, to ensure the rule of law and the society and the victim's confidence in the judicial system. The Court had reminded of those recommendations in several subsequent judgments (*Mulini v. Bulgaria*, *Vasil Hristov v. Bulgaria*).

B. The introduction of the criterion "absolute necessity" to the Ministry of the Interior Act when using force, firearms and aids was evaluated as a step in the right direction. With regard to the need for amendments to the Military Police Act (Art. 17 and Art. 18 of the

[7] Group of judgments *Nachova v. Bulgaria, Velikova v. Bulgaria, Angelova and Iliev v. Bulgaria, S.Z. V. Bulgaria.*

MPA), steps were taken to bring the legal framework in accordance with the judgment of December 2012 made by the Committee of Ministers for the rapid adoption of a regulation for the use of weapons by the military police, which should be similar to the regulation under the MoIA. The relevant amendments to the published draft Law on Amending and Supplementing the Military Police Act needed to be implemented[8] and the regulations of the MoIA and the MPA needed to be unified.

C. After the delivery of the judgment on the case *Gutsanovi v. Bulgaria*, followed by *Slavov and others v. Bulgaria*, questions were raised regarding the need of a better planning of police operations related with the so-called "exemplary arrests"[9]. The need of specific measures[10] for the provision of an opportunity to identify masked police officers working in the special forces against whom there are complaints of inhuman treatment through anonymous characteristics, as well as to ensure the impartiality and independence of police officers who in some form take part in investigations or inspections of other police officers against whom there are complaints of unlawful use of force, remained particularly strong[11]. Thus, for example, in the judgment in the case *Hristovi v. Bulgaria*, the ECHR held that "here the circumstances are such that the authorities are obliged to deploy masked officers to effect an arrest, the Court considers that the latter should be required to visibly display some anonymous means of identification - for example a number or letter, thus allowing for their identification and questioning in the event of challenges to the manner in which the operation was conducted". The fulfillment of this requirement arising from the practice of the ECHR required the adoption of the respective amendments to the MoIA (Art. 89) and the Rules for Implementation of the Ministry of Interior Act.

D. The Committee of Ministers also continued to thoroughly examine the issue of the amendments to the CPC from August 2013 related with the reintroduction of the opportunity for the accused person to request that the case be heard by the court after a certain period of time had passed after his indictment (Art. 368 and Art. 369 of the CPC). The adopted provisions with slight differences reproduced the ones which in the period between 2003 and 2010 became the direct reason for several convicting judgments for violations to art. 2 (right to life) and Art. 3 (prohibition of torture and inhuman and degrading treatment) of the Convention[12], and in some cases they could give rise to issues under Art. 4 (prohibition of slavery and forced labour and the human trafficking) and Art. 8 (right to respect for private and family life) of the Convention. After the adoption of these provisions in August 2013, on 26 September 2013, as part of its 1179-th meeting, the Committee of Ministers adopted the following decision:

"[…]As for the introduction of a preventive remedy in criminal proceedings:

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[8] http://www.md.government.bg/bg/doc/proekti_documenti/20140312_ZID_ZVP_Proekt.pdf ;

[9]See para. 8 of the judgment on the case *Gutsanovi*

[10]Decision of the CM adopted in March 2013 (1164th meeting) "4. invited also the authorities to provide information on the precise measures envisaged in order to ensure the possibility of taking statements from agents from the special forces, if allegations of ill-treatment are made against them";

[11] see decision of the CM of March 2013 "3. invited the Bulgarian authorities to provide information on the exact procedure followed in cases of allegations of ill-treatment by the police and on the measures taken to ensure the impartiality and independence of the police investigators who carry out investigative steps against other law-enforcement agents;"

[12] See cases '*Shishkovi v. Bulgaria*" (application no. 17322/04), „*Biser Kostov v. Bulgaria*" (application no. 32662/06), "*Filipovi v. Bulgaria*" (application no. 24867/04);

[…]4. note that the amendment of the CPC, allowing the discontinuation of the criminal proceedings if during the pre-trial proceedings for indictment of a person has taken more than two years, raises some issues regarding its compatibility with the requirements of the Convention, more specifically in the field of the effective investigation, and invites the authorities to provide the Committee with information on the measures that are planned in order to ensure the compliance of the remedy with these requirements as they are explained in the pilot judgment[13] *on the case Dimitrov and Hamanov v. Bulgaria.*

It was necessary to take measures to provide the compliance of the thus intended remedy against the excessive length of the criminal proceedings with the requirements of the Convention in the field of the effective investigation. As indicated, in accordance with the practice of the ECHR and the recommendations of the Committee of Ministers, the state shall be obliged to effectively investigate other hypotheses: violations of the prohibition of slavery and forced labour provided for in Art. 4 of the Convention (for example "human trafficking"), violations of rights under Art. 5 of the Convention, serious violations of rights under Art. 8 and Art. 9 of the Convention. In its Recommendation from 2011 regarding the elimination of impunity, the Committee of Ministers emphasized that this in not only a matter of justice towards victims of crimes but also a matter of respecting the principle of the rule of law.[14]

E. In connection with the above judgment *"S.Z. v. Bulgaria*", as well as with the judgments in the specified groups "*Nachova v. Bulgaria*", "*Velikova v. Bulgaria*" and "*Angelova and Iliev v. Bulgaria*", it was particularly important to take measures to guarantee the effectiveness of the criminal proceedings. In this sense, the analysis of the main shortcomings of the criminal process and the drafting of legislative amendments to overcome them were particularly compelling. In particular, the possibilities to reduce formalism in the criminal proceedings and to guarantee their speediness and efficiency, to expand the judicial review of refusals to innitiate or terminate criminal proceedings should be explored, especially in cases that affect the rights under Art. 2 and 3 of the Convention, etc. In many of the cases, the question of objectivity of the investigations was raised. This was one of the problems noted in par. 57 of the judgment *S.Z. v. Bulgaria*. i.e. the need to take other measures for the improvement of the work of the investigating and prosecuting authorities should also be discussed.

F. The issue of the effectiveness of investigations was placed in the context of other, more specific cases. Thus, for example, in the case *Nencheva v. Bulgaria* the Court held that the investigation regarding the death of children with disabilities was not effective within the meaning of Art. 2 of the Convention because no actions were taken to clarify the possible liability of persons in the administration who were responsible for providing the funds necessary for the physical survival of the children (see par. 134-136). In the case *Kolevi v. Bulgaria*, the Court found a violation of Art. 2 of the Convention due to the lack of guarantees for an independent and effective investigation for the Prosecutor General. In the case *Karaahmed v. Bulgaria*, the Court found a violation of Art. 9 of the Convention due to

[13] Paragraph 119 of the judgment on the case "*Dimitrov and Hamanov v. Bulgaria*";

[14] Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, March 2011, https://wcd.coe.int/ViewDoc.jsp?id=1769177: „Considering that impunity must be fought as a matter of justice for the victims, as a deterrent to prevent new violations, and to uphold the rule of law and public trust in the justice system, including where there is a legacy of serious human rights violations";

the lack of an effective investigation of actions that led to serious disturbances during the Friday prayers of Muslims in front of the Banya Bashi mosque in Sofia city on 20 May 2011.

3. THE GROUP OF CASES "OMO ILINDEN" - VIOLATIONS OF THE RIGHT OF ASSOCIATION AS GUARANTEED BY ART. 11 OF THE CONVENTION DUE TO REFUSALS OF THE NATIONAL COURTS TO REGISTER THE APPLICANT ORGANIZATION

In the judgments from this group the ECHR found violations of the right to association, considered in the light of the right to express an opinion, due to refusals to register associations under the Non-Profit Legal Entities Act (NPLEA)[15].

ECHR criticized the practice of national courts to impose a constitutional and legal prohibition for the associations to follow any "political purposes"[16]. According to the ECHR, this restriction must be interpreted strictly in order not to create any legal insecurity and not to refuse registration to associations which have set goals[17] related to the normal functioning of a democratic society. ECHR specified that in so far according to the Bulgarian law the associations may not take part in elections and participate in the government, the refusals for registration based on the political character of their goals were not in compliance with the requirements of the Convention since there was no "social need" of such a refusal. This was so even in cases in which the associations claim that they will support independent candidates for elections or they will hold gatherings or meetings.[18]

The second group of motives of the domestic courts for the registration refusals of associations were related to their goals aimed against the sovereignty, the territorial integrity and the unity of the nation. Such refusals had been subject to consideration and criticism by the ECHR.[19]

The third group of motives criticized by the ECHR were related with the so-called formal requirements of the law. The refusals of registration based on formal grounds due to the non-compliance of the constitutive documents with the requirements of the NPLEA should also be considered in compliance with the principle of proportionality and should be motivated.[20]

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[15] case *Zhechev v. Bulgaria*, *cases OMO Ilinden v. Bulgaria*;

[16] provided for in Art. 12 of the Constitution, as well as in para. 2 of the Transitional and Final Provisions of the NPLEA;

[17]for example, the judgment *Zhechev* indicated that associations may set as their goal to push for amendment of the Constitution, return of the monarchy, etc.;

[18]see paragraph 73 of the judgment *OMO Ilinden*, no. 59491/00 and paragraph 39 of the judgment *OMO Ilinden no. 2*, № 34960/04;

[19] The ECtHR criticized the practice of the courts when implementing Art. 44, para. 2 of the Constitution that prohibited "organizations whereof the activity is directed against the sovereignty, the territorial integrity and the unity of the nation", as far as the "separatist" ideas of a given organization by themselves were not sufficient grounds for refusal of the registration, unless the organization planned to achieve these goals through violence and other non-democratic means. Also, the expression of a given national identity within the framework of a request for registration of an association and/or of claims that were unacceptable for the majority of the citizens in a given country, could not by itself be grounds for the courts to consider that the activities of the association is aimed against the unity of the nation or the territorial integrity of the country. According to the ECtHR, any harsh criticism aimed at the authorities should also not automatically lead to a refusal of registration, even when the "claims" expressed by the founders of an association were illegitimate, exaggerated or provocative;

[20]In this sense is par. 40 of the judgment OMO Ilinden no. 2 "…the national courts have not explained why they consider that the defect is so significant as to refuse the registration, and that it is impossible to fix it in the course of the proceedings on the registration (…) The states are entitled to require from the organizations which request official registration to comply with some reasonable legal formalities, but that is always subject

Despite the additional measures undertaken by the executive authority after December 2013[21], the evaluation of the Committee of Ministers of the execution of the judgments of the ECHR under the group of judgments "*OMO Ilinden v. Bulgaria*" remained negative. In par. 2 of the decision that the CM adopted in December 2014[22], it was said, *inter alia*, that requests for registration of OMO Ilinden and any other similar association currently pending before the Sofia Court of Appeal, should be reviewed in full compliance with the requirements of Art. 11 of the Convention clarified in the ECHR's judgments.

On 20.11.2015 the SCA confirmed the decision of the lower instance court to refuse to register the applicant association. The main reason for the refusal was that the association did not intend to use peaceful means to achieve its goals. The proceedings are currently pending before the Supreme Court of Cassation.

The legislative propositions prepared by a working group at the Ministry of Justice, which rearrange the entire association registration regime and provide for transferring the registration to the Registry Agency, were a positive development from the point of view of both the specific decisions and also in view of the activities of the non-government sector.[23] The change was prompted by deficiencies in the regulatory framework of the procedure for registration and accountability of the non-profit legal entities creating conflicting jurisprudence that endangers the right to association. The court registration also did not

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to the condition of proportionality (…) To the Court, the defect seemed to have a relatively trivial nature. In the absence of further explanation, it could hardly be regarded in itself as a sufficient reason to refuse the registration of "Ilinden". This refusal was a radical measure, because it prevented the association or political party in question from even beginning to operate (…);

[21] see revised action plan https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2014)1168&Language=lanEnglish&Site=CM;

[22] Decision adopted at the 1214 meeting of the CM on 4 December 2014. https://wcd.coe.int/ViewDoc.jsp?id=2267305&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383:"The Deputies 1. noted with interest the additional awareness-raising measures recently adopted by the Bulgarian authorities; observed, however, that these measures have not been sufficient to prevent new refusals by the Blagoevgrad Court, to register UMO Ilinden and a similar association, such refusals being based partly on grounds already criticized by the Court, and expressed regret in this regard; 2. as regards the requests for registration of UMO Ilinden and of any other similar association currently pending before the Sofia Court of Appeal, stressed the importance that they be examined in full compliance with the requirements of Article 11 of the Convention, as clarified in the judgments under consideration; 3. welcomed the willingness expressed by the Bulgarian authorities to adopt additional measures for the implementation of these judgments; noted, in this respect, the information provided at the meeting according to which the Parliament will examine as a matter of priority legislative proposals with a view to clarifying the legal framework governing the registration of associations; 4. decided to transfer this group of cases to the enhanced procedure, as an expression of their support to the ongoing efforts of the Bulgarian authorities to define and adopt without delay all the measures required for the implementation of these judgments; 5. encouraged the authorities to continue their close co-operation with the Execution Department concerning the definition and/or the implementation of the necessary additional measures for the execution of these judgments, and invited them to keep the Committee informed in good time of any relevant developments concerning the implementation of all measures";

[23] The law was adopted at first reading by the National Assembly. Although it did not address directly the problem by specific solutions but represented a new concept for the legal registration of non-profit legal entities, it seemed likely that through the adoption of amendments to the Law for Non-Profit Legal Entities and the Commercial Register Act, the problems with the continued failure to execute this group of judgments would be overcome. The latter not only entailed negative consequences for the international image of the country but also carried a great risk of new convicting judgments of the ECtHR.

guarantee to a sufficient extent the publicity and the accountability of the organizations, it was slower and incomparably more expensive.

4. PROBLEMS OF THE CRIMINAL JUSTICE (VIOLATIONS OF ART. 5, 8, 13)

A. Several judgments concern issues related with actions of **search and seizure**. The judgments *Iliya Stefanov v Bulgaria"*[24] and *"Peev v. Bulgaria"*[25] referred to the disproportionate search of the office of the applicant under the first case, as well as to the illegal search of the office of the second applicant and the lack of any effective domestic remedy for the assessment of the legality of the actions to search and seize and for award of compensation.

The judgments on the cases "*Gutsanovi v. Bulgaria"*[26] and "*Prezhdarovi v. Bulgaria"*[27] concerned the ineffective and formal judicial review of the actions of search and seizure and the lack of sufficient safeguards in the national legislation in this regard.

It was recommended: 1) to make legislative amendments and to outline the scope of the judicial review, that is, what in particular should the court consider when exercising preliminary or subsequent control of the action, and, 2) to provide a domestic remedy through legislative amendment or amendment to the case-law, which allowed persons in a similar situation to the applicants to appeal the actions as unlawful and to seek compensation.

B. Currently a major problem related with the measure of **remand in custody** and identified in the group of judgments "*Bochev v. Bulgaria*"[28] is the limited scope of the judicial review on the legality of the remand in custody in the judicial phase of the criminal proceedings. This limited scope is due to the prohibition laid down in the provision of Art. 270, para. 2 of the CPC, which states that when the remand in custody is disputed in the judicial phase of the trial, it is not admissible for the court to address the issue of the presence of a reasonable assumption for a committed crime. According to the Bulgarian doctrine, this provision protects the principle of impartiality because the opposite would mean that the court prejudges the criminal case[29]. However, the ECHR criticized this approach in a number of cases[30] finding violations of Art. 5 (4) of the Convention. According to the ECHR, the logic of the doctrine and of this provision was "based on an erroneous understanding and could not justify the restriction thus imposed on the rights of the detained persons."

In view of the nature of the violations found by the Court and its analysis of the national legislation and practice, the need of legislative measures which would bring the scope of the judicial review on the need of continuation of the measure of remand in custody in line with the requirements of the Convention was obvious. In terms of the requirements of the Convention and the case-law of the Court, the requirement to consider the existence of a reasonable assumption for a committed crime was only applied when ruling in the first instance.

[24] Application no. 65755/01, final decision of 22 August 2008
[25] Application no. 64209/01, final decision of 26 October 2007
[26] Application no. 34529/10, final decision of 15 January 2014
[27] Application no. 8429/05
[28] Application no. 73481/01, final decision of 13 December 2009;
[29] See the judgment on the case "Bochev v. Bulgaria", no. 73481/01, § 66;
[30] For example, "Georgieva v. Bulgaria", no. 16085/02, §§ 39-40, and "Bochev v. Bulgaria", § 66;

C. The judgment on the case "*Svetoslav Dimitrov v. Bulgaria"*[31] referred to a very specific hypothesis, namely the illegality of the detention of the applicant due to the lack of clarity in the national legislation regarding the ratio between the preliminary detention and the execution of the sentence of imprisonment when they run in parallel and the lack of judicial review in this matter.

According to § 1, para. 5 of the AP of the EPDCA, if "at the prison or the correctional facility is received a final sentence on another case with an imposed punishment of imprisonment with regard to a person remanded in custody, the execution of the sentence shall begin at the date of its receipt". This provision should generally clarify the cases in which the prosecutor has not expressly asked for discontinuation of the pre-trial detention after the detained person has begun serving the sentence of imprisonment.

However, a provision seems to be necessary to govern the judicial review in case of any dispute on whether the period of pre-trial detention has been correctly deducted from the period of the sentence of imprisonment (a deduction provided for in Art. 59, para. 1 of the Criminal Code), although Art. 417 of the CPC gives specific powers to the prosecutor in this area. It is advisable to make legislation amendments which provide an opportunity for judicial review of the prosecutor's decisions regarding the implementation of Art. 59, para. 1 of the Criminal Code.

Another similar hypothesis, in which a problem has been found due to the lack of judicial review for detention in cases of a dispute regarding whether the limitation period for the execution of the sentence of imprisonment has expired, has also been developed in the case *"Stoichkov v. Bulgaria"* (unlawful detention for the execution of a sentence of imprisonment following a trial in absentia). It is advisable to make amendments to the national legislation/case-law, which would allow judicial review in such situations.

d) In the judgments "*Kandzhov v. Bulgaria*"[32] and "*Zvezdev v. Bulgaria*[33] the ECHR found violations of the right of every detained person to be brought promptly before a judge upon detention ruled by various institutions in several consecutive periods of time, which were not justified by a specific necessity.

In par. 33 of the judgment on the case "*Zvezdev v. Bulgaria*" the Court noted that the possibility of a person to be detained for 96 hours before being brought before a judge due to cumulation of police and prosecution detention could lead to delays that are incompatible with Art. 5 (3) of the Convention.

The execution of these judgments required measures to guarantee that the detained person would be brought before a judge to determine a permanent remand in custody as soon as possible, unless there were any special circumstances that prevent the authorities to do that.

D. The judgment on the case "*Dimitar Krastev v. Bulgaria*"[34] also poses a problem under the Convention in relation to the legal norms of the CPC. The ECHR found a violation

[31] Application no. 55861/00, final decision of 7 May 2008
[32] Application no. 68924/01, final decision of 6 February 2009;
[33] Application no. 47719/07, final decision of 7 April 2010;
[34] Application no. 26524/04;

of Art. 6(1) of the Convention because the court which has ruled in accordance with the procedure of Art. 243, para. 4 and para. 5 of the CPC regarding the **disposition of material evidence** can not hold an open hearing and gather new evidence although it ruled on a civil right, which was the alleged right to ownership of material evidence.

A similar problem was also posed by the case *ÜNSPED PAKET SERVİSİ SAN. VE TİC. A.Ş. V. Bulgaria,* where the ECHR held that there is a disproportionate interference with the property right of the applicant company because under the Bulgarian law it was not able to effectively challenge the forfeiture of a truck that was used to transport drugs, provided that there had been no information the case showing that the company was responsible for the transportation of the drugs. On the one hand, Art. 242, para. 8 of the Criminal Code did not allow the court to assess the behaviour of the owner of the property, but only the ratio between the value of the property and the severity of the crime. On the other hand, the CPC did not allow the owner to submit his objections in the criminal proceedings.

Other problems that were criminal in nature were discussed above in the part for the ineffective investigation and violations of Art. 2 and 3 of the Convention.

5. IMPLEMENTATION OF THE PRINCIPLE OF PROPORTIONALITY IN THE ADMINISTRATIVE PROCESS OF REMOVING OF ILLEGAL CONSTRUCTIONS OR SEIZURE OF REAL ESTATE PROPERTY IN CASES WHERE THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE AND HOUSING UNDER ART. 8 OF THE CONVENTION IS CONCERNED (”YORDANOVA AND OTHERS V. BULGARIA”)

The judgment “*Yordanova and others v. Bulgaria*” stated that there it will be a violation of Art. 8 of the Convention, in particular of the right to respect of the personal and family life and to housing, in case of seizure of the properties on which the houses of the applicants were built. In fact, the houses were built illegally but the authorities had tolerated this situation for decades. A reason for the potential violation was that the competent authorities, the regional mayor and the administrative courts had not made any assessment for proportionality, namely whether the seizure of the lots- - municipal property and on which the houses of the applicants were built, and the conditions for this seizure, violate the rights protected under Art. 8 of the Convention.

The ECHR ruled that the mayor’s order for seizure of the lots that were municipal property and the consequent removal of the applicants from their homes was legal and pursued a legitimate goal, but was a disproportionate interference with the rights under Art. 8 of the Convention. It was issued on the basis of a law according to which no examination of its proportionality was required and which did not provide any guarantees against arbitrariness. In order to assist the state in the execution of the judgment, the ECHR recommended legislative amendments and amendment of the case-law, so as to guarantee that in similar situations when making such decisions the authorities would identify clearly the objectives pursued, the persons concerned and the measures for compliance with the principle of proportionality.

The execution of the judgment raises a complex problem and it is under the enhanced supervision of the Committee of Ministers.

The conclusions of the Court on the case *Yordanova and others* noted the beginning of requests by applicants for the imposition of interim measures in cases when authorities proceed with seizure of properties and demolition of buildings. In connection with operations for the removal of illegal buildings in the village of Garmen, Blagoevgrad Municipality, Varna city and the town of Peshtera in the period July-September 2015, the ECHR forwarded three requests of applicants for the imposition of a protective measure under Art. 39 of the Rules of Court to the Bulgarian State. In particular, the ECHR requested information regarding the operations as well as guarantees that applicants in a vulnerable position would not remain on the street with a risk to their life and health. After the statement of the Bulgarian authorities that for the moment the measure was discontinued or that the applicants were provided with accommodation (especially to those of them in a vulnerable position – children, elderly people, people with disabilities, pregnant women), the Court dismissed the requests for the imposition of such protective measures.

Within the project[35] "Supporting the execution of the judgments of the European Court of Human Rights regarding vulnerable groups", which aimed to support the execution of the judgment *Yordanova and others*, along with other initiatives[36], a report was drafted on the problem and the possible solutions and approaches, which ended with recommendations for amendment of the practice of the competent administrative bodies and the court in respect to the implementation of the principle of proportionality set out in Art. 6 of the Administrative Procedure Core, and in Art. 8 of the Convention.[37]

Although the report made no specific recommendations for legislative amendments, an express introduction of the specified principle when removing illegal constructions under Art. 195, 225 and 225a of the Spatial Planning Act, Art. 80 of the State Property Act and Art. 46 and 65 of the Municipal Property Act could still be considered in cases that affect basic rights under the Convention, namely – the right to respect of private and family life and to home within the meaning of Art. 8 of the Convention. The possibility for regulatory imposition of some informal administrative practices which already exist, for example not to proceed to the execution of such orders during the winter months, etc.

6. COMPLIANCE WITH THE PRINCIPLE *NE BIS IN IDEM* IN ART. 4 OF PROTOCOL 7 (TSONYO TSONEV V. BULGARIA (№ 2))

In the judgment *Tsonyo Tsonev v. Bulgaria* (2), the ECHR found a violation of Art. 4 of Protocol no. 7, the prohibition *ne bis in idem*.

The facts of the case and the reasoning of the Court were briefly the following. On 11 November 1999 the applicant beat up his acquaintance. The Mayor of the town of Gabrovo fined him with 50 BGN under Ordinance 3 on the protection of the public order on the territory of the Gabrovo Municipality from 1992. Shortly thereafter a prosecutor indicted the applicant for inflicting medium bodily injury. On 14 November 2001, the Gabrovo

[35] The project was implemented in 2015 by the Legal Representation of the Republic of Bulgaria before the European Court of Human Rights Directorate[35] at the Ministry of Justice and funded under the Fund for bilateral cooperation under NFM 2009 – 2014

[36] The first initiative under the project was the holding of meetings with representatives of the local administration and the respective administrative courts in several municipalities. At the meeting, the judgment *Yordanova and others* was discussed as well as the possible measures and difficulties related with its execution. The second initiative under the project was the organization of a round table to discuss the conclusions from the work meetings. The third initiative under the project was the drafting of a report by experts with experience in the field of the human rights who had participated in the organized meetings and the round table.

[37] The report was published on the website of the Ministry of Justice

District Court sentenced the applicant to imprisonment for causing medium bodily injury. The sentence was confirmed by the second instance, as well as by the Supreme Court of Cassation on 14 October 2002. The ECHR found that based on the criteria established in the practice, the administrative penal proceedings against the applicant were "criminal proceedings" within the meaning of Art. 4 of Protocol no. 7 to the Convention. The subsequent criminal proceedings against the applicant referred to the same crime for which he had already been punished. Therefore the Court found a violation of Art. 4 of Protocol no. 7.

In pursuance of the judgment on 22 December 2015 the Supreme Court of Cassation adopted an Interpretative Judgment no. 3 with which it gave mandatory instructions in order to avoid violations of the principle ne bis in idem. However, the SCC pointed out therein that "comprehensive legislative amendments *de lege ferenda"* should be adopted in order to achieve such a framework which would guarantee, on the one hand, the compliance with the principle and, on the other hand, effective prosecution for commitment of crimes.

The general measures for the execution of the judgment *Tsonyo Tsonev v. Bulgaria*, as well as the recommendations made in the Interpretative Judgment of the SCC require making legislative amendments in order to avoid similar violations in the future. Such legislative measures should find their place at the moment in the Administrative Offenses and Penalties Act, and later in the new Administrative Offenses and Penalties Code as well as in the Criminal Procedure Code.

7. RESTITUTION AND OTHER PROPERTY ISSUES RELATED RIGHTS (ART. 1 OF PROTOCOL 1)

A large group of enforceable judgments concerned violations of Art. 1 of Protocol no. 1, which protects the individuals against unjustified interference with the peaceful exercise of their property right (and other similar rights in accordance with the Court's case-law). A large part of the violations under Bulgarian cases mainly concern problems in the implementation of the restitution legislation. In some judgments, the ECtHR gave specific instructions to the authorities to create opportunities for protection against such violations on a national level.

A. Restitution

a) An important group of judgments, in which a violation of Art. 1 of Protocol no. 1 in relation with the restitution proceedings was found was the group "*Velikovi and others v. Bulgaria*"[38], the execution of which was not completed, concerns several hypotheses: i) when the claim under Art. 7 of the Restitution of Ownership of Nationalized Real Property Act (RONRPA) was brought after the year 1997, i.e. in the renewal of the statutory deadline; ii) when the claim under Art. 7 of the RONRPA had been upheld with regard to a third parties who had acted in good faith; iii) when the title of the applicant had been declared void due to a flaw in the expropriation carried out in 1953; iv) when the title had been declared void based on the general rules for nullity (but in relation with forfeiture prior to 1989).

[38] See Velikovi and others v. Bulgaria, no. 43278/98, final judgment of 9 July 2007, "Georgieva and Mukareva", no. 3413/05, final judgment of 2 December 2010, "Kalinova v. Bulgaria", no. 45116/98, final judgment of 27 February 2009, "Kirova and others v. Bulgaria", no. 31836/04, final judgment of 2 October 2009, "Tsonkovi v. Bulgaria", no. 27213/04, final judgment of 2 October 2009, "Tonov v. Bulgaria", no. 48704/07, final judgment of 30 October 2012; The supervision of part of the judgments in this group had ended, which was described in detail in the report for 2014.

It is advisable to analyze the possibility to provide in the national legislation for some form of compensation of persons in similar hypotheses, since the procedure under Art. 7, para. 2 and 3 of the RONPRA either does not apply or is not being recognized as adequate by the ECtHR for this group of violations.

b) A number of judgments of the ECtHR concerned the *restitution of agricultural land and forests*[39]. The main problem in these cases was the delay of the implementation or the failure to implement acts of the administration or judgments with which the applicants' right to ownership on agricultural land and forests had been restored (restituted). In several of its judgments the Court gave specific recommendations towards Bulgaria, namely the introduction to the domestic law of: i) specific deadlines for the implementation of the administrative decisions and judgments of the competent national authorities which restore the right of ownership of agricultural land, and ii) a remedy allowing the parties concerned to receive a compensation in case of failure to comply with the same deadlines[40].

As specified in the reports in 2013 and 2014, it was recommended to create a working group with representatives of the competent institutions, and mostly with representatives of the Ministry of Agriculture and Forests, which would analyze the reasons why some restitution proceedings had not yet been completed. After clarifying the reasons for the delays, measures should be identified for the timely completion of the restitution proceedings without which it would not be possible to carry out the instruction of the Court to provide deadlines for the execution of administrative decisions and judgments for the restoration of a property right. The measures thus identified should be presented in an action plan before the Committee of Ministers. The question of the existence of an effective remedy was raised separately.[41]

B. Other issues related with the right of property

a) A group of judgments of the ECHR united under the name "*Kirilova and others v. Bulgaria*"[42] refer to issues related with the failure to provide compensation for properties expropriated during the 1980s or the beginning of the 1990s. The measures against such violations undertaken with legislative amendments in 1996 and 1998 have effect in the future

[39] See "Naydenov v. Bulgaria", no. 17353/03, final judgment of 26 February 2010, "Mutishev and others v. Bulgaria", no. 18967/03, final judgment of 3 March 2010, "Lyubomir Popov v. Bulgaria", no. 69855/01, final judgment of 7 March 2010, "Vasilev and Doycheva v. Bulgaria", no. 14966/04, final judgment of 31 August 2012, "Sivoval and Koleva v. Bulgaria", no. 30383/03, final judgment of 4 June 2012, "Petkova and others v. Bulgaria", no. 19130/04, final judgment of 25 September 2012, "Nedelcheva and others v. Bulgaria", no. 5516/05, final judgment of 28 August 2013, "Ivanov v. Bulgaria", no. 19988/06, final judgment of 11 December 2012, "Hadzhigeorgievi v. Bulgaria", no. 41064/05, final judgment of 16 October 2013, "Karaivanova and Mileva v. Bulgaria", no. 37857/05, final judgment of 17 November 2014;

[40] See "Mutishev and others v. Bulgaria", "Vasilev and Doycheva v. Bulgaria";

[41] The judgments on the cases *Georgi Marinov v. Bulgaria* (no. 36103/04, final judgment of 15 June 2011) and *Stoycheva v. Bulgaria (*no. 43590/04, final judgment of 19 October 2011) also concern a significant delay in the execution of restitution judgments (however not for agricultural land but for properties restituted under the Act on the restitution of ownership on some expropriated properties under the TUPA, PCSA, SIA, SPA and OA). As it seems, these judgments were rather incidental, and the possibility for persons in similar position to receive compensation under Art. 1 of the State and Municipality Responsibility for Damage Act was currently analyzed.

[42] See "Kirilova and others v. Bulgaria", no. 42908/98, final judgment of 9 September 2005, "Dichev v. Bulgaria", no. 1355/04, final judgment of 20 June 2011, "Antonovi v. Bulgaria", no. 20827/02, final judgment of 1 March 2010, etc.;

and did not cover existing situations, as apparently there are still pending expropriation proceedings which had begun in the end of the 1980s and the beginning of the 1990s.

Information was currently collected by the municipal authorities whether there were still any pending files with such subject. An analysis of the collected information is expected to be carried out in order to identify the respective measures to close these files and, if necessary, to provide the respective compensation.

b) The judgment on the case *"Shesti May Engineering and others"* (no. 17854/04, final judgment of 20 December 2011) referred to a problem related with the so-called "theft of a company". It essentially referred to a violation of the right of the applicants to protection of their property due to interference in their shares in a limited liability company with the assistance of the registration court. As a result, the legislation had not effectively protected the applicants from the consequences of these decisions due to the lack of an adequate procedure and the impossibility to implement any protective measures. This had allowed private persons to fraudulently take control of their company. The possibility of introducing guarantees against such unlawful acts on the registration should be analyzed.

c) The judgment on the case "*Patrikova v. Bulgaria*" (no. 71835/01, final judgment of 22 November 2010) concerned the illegal and arbitrary forfeiture and damage of goods of the applicant by the tax authorities, as well as the automatic and formalistic implementation of the domestic provisions. The question of whether there was any case-law of the national courts on claims under the OCA or the SMRDA, which could lead to the conclusion that persons in a similar situation would have enough domestic safeguards to avoid such violations, continued to be examined.

d) The judgment on the case *"Mikrointelekt Ltd. v. Bulgaria"* (no. 34129, final judgment of 4 June 2014) concerned the impossibility for a third person - owner of the properties, to participate in an administrative criminal proceedings (under the Administrative Offenses and Penalties Act) led against a merchant selling these properties. It is advisable to make legislative amendments to the Administrative Offenses and Penalties Act as well as in the future Administrative Offenses and Penalties Code in order to provide a possibility for such persons (third persons with respect to the administrative criminal proceedings) to take part in the proceedings and to state their arguments.

8. VIOLATIONS OF THE RIGHT TO A FAIR TRIAL (ART. 6)

Cases related with the violation of the right to a fair trial are various. For example in the group of judgments "*Angelov and others v. Bulgaria*" the right to access to courts (protected by Art. 6 of the Convention) had been violated due to failure by the state authorities to execute judgments in civil cases with which the persons are awarded a certain amount of money. The introduction of some guarantees that the state would perform such obligations without significant delay was recommended. Other judgments referred to the impossibility for exemption from court fees for legal entities – Art. 83 and Art. 84 of the Civil Procedure Code (the judgment *Agromodel v. Bulgaria*, which obviously required legislative amendments), a violation of the requirement for equality of the remedies of the parties, etc.

As mentioned above, the monitoring of the execution of fifty-four judgments, including the pilot judgments "*Dimitrov and Hamanov v. Bulgaria*" and "*Finger v. Bulgaria*", was closed in 2015 as a result of the established compensatory mechanism of

lengthy proceedings. However, in the group of judgments "*Kitov v. Bulgaria*" and "*Dzhangozov v. Bulgaria*", a certain number of judgments remain for supervision in which measures to overcome the problems identified by the ECHR should be undertaken, namely - reduction of the length of the proceedings before the busiest courts, avoidance of unjustified delays in the pre-trial phase, including remitting of cases by the court, and the introduction of an effective acceleration tool for criminal cases which would be effective in both stages of the criminal process.

With regard to the measures for expediting the proceedings, the available mechanisms such as sending an alert to the administrative head or the inspections of the Inspectorate at with the Supreme Judicial Council could actually have a disciplining effect for the court but did not directly lead to expediting of the proceedings.

Such an expediting mechanism in the civil procedure, even though withincomplete coverage, was laid down in the Civil Procedure Code – the so-called "slowness complaint". The ECHR generally accepted that the slowness complaint might serve to expedite the civil proceedings and thus could be an effective remedy, but it noted in some of its judgments that this institute could not prevent certain kinds of delay (for example, delays before the cassation instance).

The possibility for the accused person to request discontinuation of the criminal proceedings in the pre-trial phase was strongly criticized by the Court and by the Committee of Ministers due to the potential incompatibility with other rights protected by the Convention. Regarding the judicial phase of the criminal proceedings, however, there is a lack of any acceleration tool *altogether*, due to which repeated violations of the requirement for examination of the case within a reasonable time had also been found. In its judgment of December 2012, the Committee of Ministers recommended to the Bulgarian authorities to adopt an acceleration mechanism in the field of the criminal proceedings[43]. However, this mechanism need to be carefully considered in order not to be in conflict with other rights protected by the Convention.

9. APPEALING AGAINST DECISIONS OF BNB FOR REVOCATION OF A BANK LICENSE AND INNITIATING BANK INSOLVENCY PROCEEDINGS (ART. 6 (1) OF THE CONVENTION AND ART. 1 OF PROTOCOL 1)

Problems[44] related with the property right and the right to a fair trial arising from the judgment "*Capital Bank AD v. Bulgaria*" (application no. 49429/99) continue to be subject to supervision by the CM.

In that case, the ECHR ruled that the right to fair trial of the applicant bank had been violated, and the interference with its property had been illegal within the meaning of Art. 1 of Protocol no. 1 of the Convention. In connection with the violation of the right to fair trial under Art. 6 (1) of the Convention, the questions which the execution posed were two: on the one hand, the non-appealability of the decision for the revocation of the license and, on the other hand, the fact that the bank was represented in the insolvency proceedings by

[43]"4. It encourages the authorities to continue working on the introduction of an acceleration tool to the criminal proceedings";
[44]See the action plan on the case *Capitalbank* - https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2014)1376&Language=lanFrench&Site=CM;

special administrators who were dependent on the other party in the proceedings - the Bulgarian National Bank (BNB).

After the adoption of the Credit Institutions Act in 2006 (Art. 151), in theory the decisions of the BNB for revocation of a bank's licenses could be appealed before a court. The access to a court so provided, however, did not meet the requirements of Art. 6 (1) of the Convention because the bank could only appeal the respective decision through the special administrators who were dependent on the other party in the proceedings - the BNB. The current legislation framework did not provide a possibility for the bank to effectively participate in the insolvency proceedings. According to Art. 16, para. 1 of the Bank Insolvency Act (BIA), only the special administrators (appointed by and dependent on the BNB) and the supervising body itself – the BNB, are entitled to appeal the judgment of the first instance, and the Prosecution Office has the right to protest.

Apparently the practice of the BNB is to revoke the license of the credit institution (Art. 36 of the CIA) with one administrative act (decision of the Management Board of the BNB) and to request the opening of insolvency proceedings (Art. 13 of the BIA). In their practice, the courts as a whole agree that the shareholders in a credit institution "have no legal interest" to challenge that act (within the meaning of Art. 147 of the APC). This practice seems inconsistent with the judgment "*Capital Bank AD v. Bulgaria*" because the bank itself could not effectively participate in those proceeding, since it was represented by persons who were dependent on the other party in the proceedings. If the framework, according to which the bodies of the bank could not participate in the proceedings for appealing the decision for the revocation of the license and/or could not appeal the decision for insolvency, were to be kept, the shareholders (possibly owning a certain portion of the shares) should have these rights.

The question was posed again in 2015 in the context of the request by the Supreme Court of Cassation to establish the unconstitutionality of the provisions of Art.16, para.1, sentence 3 of the Bank Insolvency Act: "Special administrators or liquidators of the bank and the Central Bank shall be entitled to appeal, and the prosecutor shall be entitled to protest." and of Art.11, para. 3 of the Bank Insolvency Act: "The bank against which a petition to open insolvency proceedings has been filed shall be represented during the case by the special administrators appointed by the central bank or by the appointed under Art. 12, para. 1, item 2 liquidators or authorized by them persons", due to conflict with Art. 122, para. 1, in relation with Art. 117, para. 1, Art. 121, para. 1 and Art. 56, and with Art. 4, para. 1 of the Constitution of the Republic of Bulgaria, and conflict with Art. 121, para. 1, in relation with Art. 117, para. 1, Art. 122, para. 1, and Art. 56 and with Art. 4, para. 1 of the Constitution of the Republic of Bulgaria, and for the establishment of their noncompliance with Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In its request to the Constitutional Court, along with the other motives for the establishment of the unconstitutionality of the relevant provisions of the BIA, the Supreme Court of Cassation also listed the case "*Capital Bank v. Bulgaria*".

By a decision of 4 February 2016, the Constitutional Court admitted the examination of the case on its merits.

In two consecutive reports – for the years 2013 and 2014, the Minister of Justice expressed opinion for the need of adoption of legislative amendments which would guarantee the participation of shareholders in the proceedings for appealing the act for revocation of the license, as well as measures related with the independent representation of the bank in the proceedings. Despite the pending proceedings before the Constitutional court, the need for legislative amendments still seemed necessary.

10. EXPULSION OF FOREIGN NATIONALS (ART. 3, 8, 13 OF THE CONVENTION AND ART. 1 OF PROTOCOL 7)

Within the group "*C.G. and others v. Bulgaria*" (in an enhanced supervision procedure by the CM), various questions were posed regarding the implementation of the provisions of the Foreign Nationals in the Republic of Bulgaria Act (FNRBA) and the judicial review in the expulsion of foreigners.

Despite the amendments and the harmonization of the FNRBA with the European law and with the Convention, the drawbacks arising directly or indirectly from imperfections in the existing legal framework which had been established and indicated by the ECHR had not been fully overcome. For most of the drawbacks listed below, the ECHR gave instructions under Art. 46 of the Convention regarding what general measures should be taken in order to implement the adopted decisions.[45]

A. In the first place, this is the problem with the lack of **an adequate legal method for consideration of claims that the expulsion of a person in a particular host country would endanger their life or would expose them to risk of torture or inhuman or degrading treatment**. The legal framework was not yet in compliance with the requirements of the Convention. Despite the imperative prohibition of Art. 44A of the FNRBA for expulsion of a foreigner in a country in which their life and freedom would be endangered, according to the ECHR the drawbacks of the mechanism existing at the moment were due to: 1. the lack of **automatic suspensive effect** on the implementation of the expulsion order until the end of the proceedings on a complaint under Art. 44a of the FNRBA; 2. a thorough examination of similar complaints by the national court.[46]

In its decisions "*M. and others v. Bulgaria*" and "*Auad v. Bulgaria*", the ECHR made a number of specific recommendations for the criteria that should be met when considering an application in which a person would claim that their expulsion would endanger their life or would lead to a risk of inhuman treatment or punishment. According to the ECHR,[47] in cases of expulsion, the national law should provide an obligation for the expulsion body to **mention the country accepting the person in a binding legal instrument** in order to allow the assessment of the presence or absence of risk of treatment in violation of Art. 2 or Art. 3 of the Convention in its territory, as well as the lawfulness of the detention with a view to expulsion. Similarly, any change of the country in which a person would be expulsed should also be subject to appeal.

In its judgment of September 2013 on the group "*C.G. and others v. Bulgaria*", the Committee of Ministers specifically recommended to the Bulgarian authorities to adopt legislative amendments in order to overcome the above mentioned drawbacks of the

[45] see the judgment *M. and others*, paragraph 138 and the judgment *Auad*, paragraph 139;
[46] see, for example, *M. and others*, paragraph 130 of the judgment;
[47] see, for example, the case Auad, paragraphs 133 and 139 of the judgment;

Bulgarian legislation[48]. The recommendation was repeated in a judgment of the CM of March 2015.

B. The following matter concerned the **scope and quality of the judicial review** on the expulsion orders when they affect the private and family life of applicants. During the recent review of these issues in September 2013 and March 2015, the Committee of Ministers noted a positive development of the jurisprudence of the SAC, which could lead to overcoming some of the drawbacks established in the judgments of the ECHR regarding the scope and quality of the judicial review as a remedy against any risk of violations of Art. 8 of the Convention in relation with expulsion orders issued on the grounds of a threat to the national security. Some of the drawbacks established by the ECHR, however, could not be overcome without an amendment and clarification of the existing legislation.

One of the main problems indicated by the ECHR was the formal judicial review on the existence of facts and circumstances proving the existence of a threat to the national security[49]. In some cases, questions related with a possible conflict between issued expulsion orders and decisions of the authorities granting a refugee status or humanitarian protection were also raised.

The ECHR also criticized the failure to inform the foreigner against whom the order had been issued with the facts and circumstances based on which the competent authorities claimed that the same was a threat to the national security. The ECHR also criticized[50] the practice of the Bulgarian courts to make the decisions made against expulsion orders *fully* secret.[51] In general, there was no obligation the entire information available to the authorities to be presented to the foreigner if that would entail a risk for the national security. However, the foreigner should still be presented with sufficient information so that they might effectively challenge the allegations against them. It is advisable to consider specific and detailed framework for classifying cases while finding the balance between the observance

[48] „…called upon the Bulgarian authorities to adopt without delay the legislative measures required following the findings and indications of the European Court in the judgments of this group, in particular concerning the need to give suspensive effect to the remedy in this area in case of risk of ill-treatment in the destination country and to provide that every change of the destination country is amenable to appeal; 4. invited them also to take measures in order to ensure that, in cases in which neither Article 3 nor any other provision of the Convention requiring the establishment of a remedy with suspensive effect is applicable, an expulsion based on public order considerations should not be carried out before the person concerned has had the possibility to exercise his rights guaranteed under Article 1 of Protocol No. 7, unless the circumstances of the case require it…"

[49] In a number of its judgments, the ECtHR criticized the practice of the SAC to base its judgment regarding the existence of a threat for the national security not on specific facts related with the behaviour of a specific person but on generally worded statements and assessment for the foreigner mentioned in a document drawn up by the security services. Furthermore, when considering the appeals against expulsion orders, the SAC also held that there had been a threat to the national security in cases in which the security services had given the term "national security" content that went beyond its normal and reasonable meaning.

[50] See the judgments on "Riza v. Bulgaria" and "Amie and others v. Bulgaria"

[51] It should be emphasized here that it its judgments the ECtHR explicitly noted that due to the sensitive nature of the information regarding the national security the states have a right to provide for appropriate restrictions related with the access to such kind of classified information. These restrictions, however, should not be so comprehensive as to deprive the foreigner from the opportunity to exercise their right to defense in a meaningful way. Giving an example with the experience of Great Britain, the ECtHR noted that some states had decided to only classify parts of the judgments on expulsion cases in which the issue of whether the foreigner presented a threat to the national security or not was addressed. In practice, it should be noted that the British Special Immigration Appeals Commission (SIAC) had prepared a public and a classified judgment, the public judgments often being very detailed and containing many specific facts describing the behaviour of the foreigner concerned.

of the procedural rights of the foreigner and the public interest in identifying a threat to the national security.

C. The following problem related with the **procedural safeguards when expulsion foreigners** was posed in some judgments.

Art. 1 of Protocol no. 7 of the Convention provided several procedural safeguards regarding the expulsion of legally residing foreigners. Para. 2 of this provided that a foreigner might be expelled before taking advantage of the right that their case be examined only if this was necessary in the interest of the public order or if it was based on grounds of national security.

According to the Explanatory Report to Protocol no. 7 (paragraph 15), the exceptions provided for in para. 2 of Art. 1 of Protocol no. 7 should be interpreted in accordance with the **principle of proportionality** developed in the practice of the ECHR, including in cases when a certain foreigner was expelled on grounds related with the protection of the public order. In other words, the allegations of the existence of a threat to the public order did not always justify the expulsion of a legally residing foreigner before the consideration of their appeal against the expulsion order; the need of immediate execution of the order should be subject to assessment.

According to Art. 44, para. 4, item 1, all expulsion orders were subject to immediate execution. This provision should be amended in order to distinguish between the expulsion orders based on national security reasons and the expulsion orders based on a violation of the public order, in accordance with the Explanatory Report to Protocol no. 7 and the practice of the ECHR.

In addition to the clear definition of legislative amendments of the legal framework, namely indication of the host state in the expulsion order, suspensive effect of the appeal against the expulsion order in a specific country based on real risk to the life or risk of torture and inhuman treatment, detailed regulation of classifying of cases, as well as guarantees for effective judicial review, the performance of specialized trainings for magistrates on the case-law of the ECHR regarding the rights of foreigners under Bulgarian jurisdiction and their expulsion is also necessary.

11. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (ART. 9)

The violation found by the ECHR in the judgment "*Holy Synod of the Bulgarian Orthodox Church v. Bulgaria"*[52] was related to an unjustified interference by the state in the organization of the Bulgarian Orthodox Church.[53] In its judgment, the ECHR held that some provisions of the Religious Denominations Act of 2002 and their implementation had led to forced amalgamation of believers under one leadership during the church schism in the Bulgarian Orthodox Church. According to the constant case-law of the ECHR, "in democratic societies, it is not the state's job to take measures to ensure whether the religious communities remain or are brought together under a unified leadership. The state measures which favour a particular leader of a divide religious community or want to make it, in whole

[52]decisions of 22.01.2009 and 16.09.2010

[53]Similar violations of the right under Art. 9 of the Convention were also found on the cases "*Hasan and Chaush v. Bulgaria*" and "*Supreme Spiritual Council of Muslims in Bulgaria v. Bulgaria*";

or in part, to place itself under a unified leadership against its will would constitute a violation of the freedom of religion."[54]

Regarding the execution of the judgment, "the general measures for the execution of its [the ECHR's] judgments in this case should include such an amendment to the Religious Denominations Act of 2002 which would guarantee that the conflicts regarding the leadership of religious communities would be resolved by the religious communities themselves and that the disputes related to civil consequences of these conflicts would be resolved by courts"[55]

At the same time, paragraph 3 of the Transitional Provisions of the Religious Denominations Act of 2002 provided that the persons who upon the entry into force of this Act had separated from a registered religious institution in violation of its statute approved by the established order could not use an identical name and use or dispose of its property. This provision was in conflict with the above mentioned judgments of the Court. This provision essentially contained an exclusion of some persons from the organizational life of the religious denomination under the law itself, which was hard to reconcile with the authorities' duty under Art. 46 of the Convention to undertake legislative measures aimed at ensuring that the leadership conflicts in religious communities shall be resolved by the community itself. Moreover, according to Art. 15, para. 2 of the Religious Denominations Act there could not be more than one legal entity as a religious denomination with one and the same name and seat, i.e. paragraph 3 partially and unnecessary repeated Art. 15, para. 2 of the above mentioned Act.

12. ACCOMMODATION IN TEMPORARY JUVENILE FOSTER INSTITUTIONS, THE CASE "A. AND OTHERS V. BULGARIA" (ART. 5)

In the judgment *"A. and others v. Bulgaria",*[56] the ECHR found a shortcoming in the framework of the Control of Juvenile Anti-social Behaviour Act. The Act provide in its Art. 37 that the stay in the temporary foster institutionscould not exceed 15 days and the stay of more than 24 hours should be permitted by a prosecutor. In exceptional cases, with the permission of the respective prosecutor, the period of stay at the home could be extended to 2 months. The accommodation of the applicants, which represents detention within the meaning of Art. 5 (1) of the Convention, had not been appealed before a court. The law did not provide for a possibility of judicial review of the legality of the accommodation, due to which it did not meet the requirements of Art. 5 § 4 of the Convention. This was the main problem in the judgment.

Furthermore, the ECHR found a problem with the accommodation of children in crisis centres. Art. 28 of the Child Protection Act provided that the accommodation of the applicant should happen by a judgment of the district court. However, the applicant was placed in such crisis centre by decision of the municipal social assistance service in violation of the national legislation.

[54]see paragraph 147 of the judgment adopted on 22.01.2009;
[55]see paragraph 50 of the judgment adopted on 16.09.2010;

[56] Judgment of 29 November 2011.

Based on the judgment of the ECHR on the case "*A. And others v. Bulgaria*" and in the context of the Roadmap[57] adopted by the Council of Ministers with protocol decision no. 8/01.03.2013 for implementation of the Concept for state policy in the field of justice for the child adopted on 03.08.2011, an interdepartmental working group was established in the Ministry of justice to implement the Concept. In view of the execution of the judgment A. and others v. Bulgaria and considering that currently applications against Bulgaria with similar subject are pending before the ECHR, a legislative amendment to the Control of Juvenile Anti-social Behaviour Act and provision of judicial review of the detention of minors and juvenile is particularly urgent.

13. PROBLEMS RELATED WITH THE ELECTORAL RIGHTS OF CITIZENS – THE CASE "PETKOV V. BUGLARIA" AND "RIZA AND OTHERS V. BULGARIA"

The case "*Petkov and others v. Bulgaria*" referred to the failure to recover the applicant in the election lists by the electoral authorities despite the existence of final judgments for that (Art. 3 of Protocol 1) and the lack of effective remedies (Art. 13).

The new Election Code (of 2014) provided no possibility for candidates to be removed from parties because of connections with the security services before 1989. However, since the aim was to prevent such violations in the future, the Committee of Ministers examined whether the legal framework prevented situations in which the registration of a certain candidate who did not meet the requirements of the law could be deleted in "the last minute" before the elections, and the issue of the legality of this deletion could not be resolved by the Supreme Administrative Court before the elections (in order for the restoration of the registration to be possible and the candidate to take part in the elections).

In a recent judgment on the case *"Riza and others v. Bulgaria",*[58] the ECHR found that due to the identified gaps in the domestic law and the lack of opportunity to carry out new partial elections, the rights of the applicants to active and passive participation in elections had been violated. Thus the main problem according to the judgment was related with the fact that the Election Code did not provide an opportunity for holding new partial elections in voting sections in case the Constitutional Court canceled the election results only for individual sections.

14. THE RIGHT TO AN EFFECTIVE REMEDY AGAINST VIOLATIONS OF THE CONVENTION (ART. 13)

There is no generally effective domestic remedy in accordance with Art. 13 of the Convention in Bulgaria. In accordance with the subsidiary nature of the proceedings before

[57] The Roadmap proposed to amend the legal and regulatory framework in the criminal process for adolescents and for treatment of children who had been victims of crime. The purpose of the reform planned in the Roadmap was to coordinate the actions of all institutions. It was proposed that cases of adolescent children be considered by specialized courts. In order to implement the strategic goals laid down in the Roadmap, propositions for amendments were provided for in the Criminal Code, the Criminal Procedure Code, the Ministry of the Interior Act and the Legal Aid Act. The reforms provided for in the roadmap were included in the National Development Programme: Bulgaria 2020.

[58] see above

the European Court of Human Rights, the Bulgarian State should introduce a remedies or a combination of remedies in order to provide opportunities for examining complaints about violations of the rights guaranteed under the Convention. That was also covered as a main component in the Brighton Declaration adopted in 2012 by the Member States to which Bulgaria became a party. That commitment was reaffirmed in the Declaration adopted at the at the High-Level Conference of Member States of the Council of Europe in Brussels in 2015. According to these commitments, the Member States should "create, if necessary, new domestic remedies – general or specific ones, in relation with the complaints about violation of the rights and freedoms protected under the Convention".[59] The implementation of this intention in accordance with the requirements of Art. 13 of the Convention would dramatically reduce the number of complaints before the European Court of Human Rights, which are often repetitive.

Drafting of constitutional and legislative amendments for the introduction of the right to direct constitutional complaint in order to expand the access to constitutional justice following the example of a number of recognized European democracies would have a significant and indisputable effect as a domestic remedy against violations of the Convention. Another possibility would be the adoption of an entirely new concept for compensation for damages caused by state bodies and local authorities.

PART THREE

EUROPEAN COURT OF HUMAN RIGHTS – INFORMATION FOR 2015

1. STATISTICS OF THE SECRETARIAT OF THE ECHR FOR 2015

According to official statistics of the Secretariat of the ECHR for 2015, Member States with the highest number of judgments establishing at least one violation of the Convention are Russia (109 judgments), Turkey (79), Romania (72), Ukraine (50) Greece (43) and Hungary (42). In this ranking for 2015, Bulgaria takes the seventh place with 28 judgments establishing at least one violation of the Convention.

What is disturbing is the fact that with respect to Bulgaria, the most numerous violations are those of the core rights guaranteed by Art. 2 and Art. 3 – prohibition of inhuman and degrading treatment or punishment and lack of an effective investigation into these cases, as well as in cases of death – a total of 17 violations for the year. The other ones are violations of the right to an effective domestic remedy (9); the right to peaceful enjoyment of possessions (5); the right to a fair trial (5), etc.

As at 31 December 2015, the majority of pending cases were against Ukraine (14 250 and 21.5%), Russia (9 150 and 13.8%), Turkey (8 650 and 13.6%) and Italy (7 550 and 11.4%). Next in line are Hungary, Romania, Georgia, Poland, Slovenia, Azerbaijan. The remaining 37 Member States form 16.8% of the cases pending or 11 150 applications.

[59] Brighton Declaration adopted at the High-Level Conference regarding the Future of the ECtHR, April 2012. "…Considering the introduction if necessary of new domestic legal remedies, whether of a specific or general nature, for alleged violations of the rights and freedoms under the Convention";

Bulgaria is among them as under this criterion, it is ranked on the 16th place with 794 applications. These numbers confirm the trend of reducing the number of pending applications against Bulgaria and after our country taking the places between 7th and 9th in the ranking for years, in the last two years Bulgaria is consistently outside the top 10 Member States of the Council of Europe with the most applications before the ECHR. This is largely due to the reform of the system of the Convention itself, as well as to the support provided by the Bulgarian state in the last three years to the Registry of the ECHR by sending national experts[60] on projects funded by the Norwegian Financial Mechanism.

In January 2016, the President of the Court, Mr. Raimondi, noted in his traditional annual speech on the opening of the judicial year that the number of pending applications is below 65,000 or 7% less than in the previous year. Despitethe significant decrease in pending applications in 2015, the President of the ECHR expressed concern about the amount of repetitive cases representing more than a half of all pending cases. He stressed the need for each Member State to ensure that systemic and structural issues are resolved first at the national level in accordance with the principle of subsidiarity.

For the indicator number of applications and number of judgments with at least one violation of the Convention for the last 5 years, the statistics look like this:

	2011	2012	2013	2014	2015
Total number of applications allocated to a judicial panel	4050	3850	2450	969	794
Judgments with at least one violation	52	58	26	18	28

2. SOME OF THE MOST IMPORTANT JUDGMENTS OF THE ECHR AGAINST BULGARIA RULED IN 2015

A. Of the ECHR's judgments ruled in 2015 on applications against Bulgaria, the following judgments in which the Court found violations of the Convention should be emphasized.

a) *Neshkov and others v. Bulgaria* (applications nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, pilot judgment)

On 27 January 2015, the ECtHR ruled a pilot judgment against Bulgaria in the case *Neshkov and others v. Bulgaria* (no. 36925/10), in which it found a systemic problem of overcrowding and poor material conditions and hygiene in places for deprivation from liberty, lack of effective preventive and compensatory remedies.

[60]The funds for secondment of national experts were provided under pre-defined project 1 (of the Supreme Judicial Council) and pre-defined project 3 (Procedural Representation of the Republic of Bulgaria Before the European Court of Human Rights Directorate, MoJ) under the Norwegian Financial Mechanism 2009-2014;

ECHR made specific recommendations to the Bulgarian Government to address the problems and gave eighteen months to the authorities to introduce effective legal remedies.

b) *S.Z. v. Bulgaria* (application no. 29263/12)

The Court unanimously found a violation of Art. 3 of the Convention because of deficiencies in the investigation carried out on illegal deprivation of liberty and rape. The Court criticized the excessive delays in criminal proceedings and the failure to investigate certain aspects of the acts. It found particularly disturbing the fact that the authorities did not consider it necessary to investigate the allegations of the applicant that the case might have involved an organized criminal group for women trafficking.

The Court further noted that in more than 45 judgments against Bulgaria, it has found that the authorities had not conducted an effective investigation because of significant delays in investigations leading to the expiry of the limitation period for prosecution; exclusion of evidence and witnesses; repeated refusals of a prosecutor to execute court instructions on the investigation. The Court found that these repeated shortcomings revealed a systemic problem with the ineffectiveness of investigations in Bulgaria.

However, the Court stated that it was aware of the complexity of the problem and that the Bulgarian authorities, in cooperation with the Committee of Ministers, should decide what general measures are necessary to prevent similar violations of the Convention in the future.

More information on the execution of the judgment S.Z. v. Bulgaria and other judgments finding a problem with the effectiveness of criminal proceedings in Bulgaria can be found above in Part II of the report.

c) *Stoykov v. Bulgaria* (application no. 38152/11)

The case is related to the applicant's allegations that he was ill-treated by police authorities during his detention and hours after his arrest. The Court found that the suffered ill-treatment should be defined as torture and a found a violation of Art. 3 of the Convention in its material limb. A violation of Art. 3 in its procedural limb was found because of the ineffectiveness of the investigation into the circumstances surrounding his detention.

This judgment will also fall in the group of cases *Velikova,* mentioned above.

d) *Myumyun v. Bulgaria"* (application no. 67258/13)

The case is related to ill-treatment by police officers suffered by the applicant, which the ECHR defined as torture. On 20 February 2012, the applicant was summoned to the police station in the town of Pavel Banya in relation of a stealing complaint received a few days earlier. Once asked if he had anything to do with the stealing, the three police officers who were with him began to hit and kick him and applied electroshock to him.

Disciplinary proceedings followed and it was found that the police officers unlawfully detained the applicant. They were punished with a ban on promotion for three years. Ill-treatment of Mr. Myumyun was not established. In the criminal proceedings instituted against them, it was accepted that they have ill-treated Mr. Myumyun, causing him

a light bodily injury. By a decision of Kazanlak District Court of 12 December 2013, the police officers were released from criminal liability by imposition of an administrative fine.

The ECHR found that these punishments were disproportionate to the gravity of the act of torture. According to the Court, the problem lied in the fact that no offense that could be discussed in the present case (under Arts. 128, 129 and 130 of the Criminal Code, under Art. 143, para. 1, Art. 282, para. 1 or Art. 287 of the Criminal Code) appeared to be eligible to be referred to the full range of questions about the act of torture to which the applicant had been subjected. The Court found that the Bulgarian legal system had not provided an adequate response to the act of torture and there was therefore a violation of Art. 3 of the Convention.

This judgment will also fall within the scope of the group of judgment *Velikova v. Bulgaria.*

e) *Slavov and others v. Bulgaria* (application no. 58500/10)

The applicants are four persons – spouses and their two minor children. The case is related to a police operation in which the first applicant, a businessman from Varna city, was arrested, and search and seizure was carried out at the home of the applicants.

The Court considered that the police operation at the home of the applicants had not been planned and executed in a way to ensure that the means use were limited to what was strictly necessary to achieve the ends. Therefore, the Court found a violation of Art. 3 of the Convention. There has been a violation of Art. 8 of the Convention concerning the performed search of the applicants' home and the seizure of a number of objects. The Court found a violation of Art. 13 of the Convention because the applicants had not had any domestic remedy that would allow them to defend their right not to be subjected to treatment contrary to Art. 3, and their right to privacy of their home, as guaranteed by Art. 8 of the Convention.

The Court found a violation of the presumption of innocence in relation to the statement of the Minister of the Interior in an interview with the newspaper Cherno more, published on 1 April 1 2010. The Court, by six votes to one, considered that there was also a violation of Art. 6 § 2 of the Convention in terms of motivating the decision dated 18 May 2010 of the Varna Regional Court reviewing the continuation of the applicant's detention on remand.

Due to a violation of Art. 3 of the Convention, this judgment will also fall into the group of judgments *Velikova and others v. Bulgaria.*

f) *Toni Kostadinov v. Bulgaria* (application no. 37124/10)

The case is related to the detention of the applicant and the disregard of the presumption of innocence. The Court held that **there were no** violations of Art. 5 §§ 1, 3, 4 and 5 of the Convention. There was, however, a violation of the applicant's right under Art. 6 § 2 of the Convention to be presumed innocent until proved guilty according to law due to the words used in the statement of the Minister of the Interior that, according to the Court, had gone beyond provision of information on the case. The Court noted that the lack of intention for violation of the presumption of innocence did not preclude a violation of Art. 6 § 2 of the Convention.

g) *Stefan Stankov v. Bulgaria* (application no. 25820/07)

The case is related to the placement of the applicant under guardianship and his placement by his mother, as his guardian, in a social care home for people with mental disorders.

In the present case, a medical expert assessment was done in the context of the proceedings for placement of the applicant under guardianship. The conclusions were directed to the issue of his legal capacity, and not whether his placement in a specialized institution had been necessary. The Court concluded that it had not been established that the applicant had been a danger to himself or others. It criticized the lack of medical examinations conducted over certain time intervals to assess whether it had been necessary for his placement to continue. Such an assessment had not been provided for in the applicable legislation. In view of the foregoing, the Court found that there was a violation of Art. 5 § 1 f) of the Convention.

Considering the complaint under Art. 5 § 4 of the Convention, the Court referred to its findings in the judgment of the Grand Chamber *Stanev v. Bulgaria* and concluded that there was a violation in this case, as well. The Court found a violation of Art. 5 § 5 of the Convention.

The Court considered that the living conditions in which the applicant had been placed before 2008 were in breach of Art. 3 of the Convention. The Court found a violation of Art. 13 in conjunction with Art. 3 of the Convention.

Examining the applicant's complaint under Art. 6 § 1 of the Convention, the Court again relied on its findings in the judgment *Stanev v. Bulgaria* and found that there was a violation and that the applicant had been denied access to court.

h) *Yagnina v. Bulgaria* (application no. 18238/06)

The Court found a violation of Art. 6 § 1 of the Convention (access to court) because of the failure of the NEMC to execute a final judgment of the SAC in favour of the applicant. There was a violation of Art. 13 of the Convention (right to an effective remedy) as the national legislation had not provided for a procedure for enforcement of judgments against the state.

i) *Penchevi v. Bulgaria* (application no. 77818/12)

The applicants are mother and son. In April 2010, the applicant filed for divorce and at the same time, she initiated legal proceedings in order to obtain judicial authorization replacing the consent of the father for the child to travel abroad. Initially, her request was granted, but in June 2012, the Supreme Court of Cassation refused to grant authorization. The ECHR found that the process of decision-making at the national level was wrong for the following reasons: a) the decision of the SCC had not analyzed what had been in the best interests of the child, and the request had instead been rejected on formal grounds; and b) the proceedings had lasted for excessively long time. In view of the above, there was a violation of Art. 8 of the Convention.

The Court held that although the complaint was admissible, no separate issue arise under Art. 2 of Protocol no. 4 to the Convention.

An interpretative decision of the Supreme Court of Cassation is being prepared for the execution of this judgment.

j) *Dimitrova v. Bulgaria* (application no. 15452/07)

Mrs. Dimitrova was a member of organizations related to the international religious community Word of Life. Pursuant to Art. 185 of the Criminal Procedure Code of 1974, the prosecution ordered the police to take measures to restrict access of the organization to places where members can hold meetings, so they began to organize them in their homes. A search of the applicant's home followed and a number of items were seized. In December 1995, she brought an action under the State and Municipality Responsibility for Damages Act.

The Court found violations of Art. 9 and Art. 13 in conjunction with Art. 9 of the Convention, since the restriction of the applicant's right to freedom of religious expression had not been provided by law. The Court noted that the measures had not been carried out in the context of pre-trial proceedings and the powers of the prosecution under Art. 185 of the Criminal Procedure Code of 1974 had been so wide that they had not provided any protection against arbitrariness. Moreover, the Court noted that the national legislation as applied by the courts was not clear enough as regards the legality of the activities of unregistered religious communities.

k) *Karaahmed v. Bulgaria* (application no. 30587/13)

The case is related to the disorders between members and supporters of the political party Ataka and praying Muslims at the Banya Bashi Mosque in Sofia city on 20 May 2011 and the investigation of the incident. The Court held that the authorities had failed to strike a balance in the steps taken by ensuring the effective and peaceful exercise of the rights of demonstrators and the rights of the applicant and other praying persons. Consequently, the State had failed to fulfill its positive obligations under Art. 9 of the Convention and there was a violation of this provision.

The applicant's complaint under Art. 3 of the Convention was declared by the Court manifestly unfounded. It held that "the minimum level of severity" under Art. 3 had not been reached. Since Art. 14 of the Convention has no independent application, the Court declared the complaint under Art. 14 in conjunction with Art. 3 of the Convention manifestly ill-founded as well.

l) *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria* (application no. 3503/08)

The case is related to forfeiture in favour of the State, pursuant to Art. 242, para. 8 of the Criminal Code, of a truck owned by the applicant company in connection with an offense committed by the driver of the truck. The Court held that the applicant company had suffered excessive burden that could have been legitimate only if it had had an opportunity to effectively challenge the forfeiture of its possessions as a result of criminal proceedings which it had not been a party to. Such a possibility, however, had not been available. Therefore, no fair balance had been stricken between the protection of the property rights of the applicant and the requirements of the general interest, in violation of Art. 1 of Protocol no. 1 to the Convention.

m) *Riza and others v. Bulgaria* (applications nos. 48555/10 and 48377/10)

The applicants are Rushen Mehmed Riza, the political party Movement for Rights and Freedoms (DPS) and 101 Bulgarian citizens who exercised their right to vote in the parliamentary elections in 2009 in 17 polling stations in Turkey. They argue that the decision of the Constitutional Court to annul the election results in 23 polling stations opened in Turkey had unfairly prejudiced their right to stand for and vote in elections, as guaranteed by Art. 3 of Protocol no. 1 to the Convention. The Court found that, given the identified gaps in domestic law and the lack of possibility to carry out new partial elections, the contested decision, which is based on purely formal arguments, has unduly violated the applicants' rights. It held by six votes to one that there was a violation of Art. 3 of Protocol no. 1 to the right of Mr. Riza and the DPS to participate in elections. The Court unanimously found a violation of Art. 3 of Protocol no. 1 in respect of the right to vote of the remaining 101 applicants.

B. In 2015, the ECHR delivered many judgments dismissing applications as inadmissible or did not find violations of the Convention. Some of the most important judgments in this regard are listed below.

a) *Tsanova-Gecheva v. Bulgaria* (application no. 43800/12)

The case relates to allegations of ineffective judicial review in connection with a complaint against the decision of the Supreme Judicial Council (SJC) for the appointment of chairman of the Sofia City Court (SCC). The Supreme Administrative Court (SAC) has checked the legality of the decision of the Supreme Judicial Council and has considered the main arguments of the applicant on the compliance with the procedure and the alleged lack of reasoning for the decision. According to the ECHR, the performed judicial review was in accordance with Art. 6 of the Convention, and there was therefore no violation of that provision. In the remainder, the Court declared the application inadmissible.

b) *Erkan and others v. Bulgaria* (application no. 21470/10, decision as to the admissibility)

The application was lodged by relatives of a Turkish fisherman who had died in an incident during an attempt by Bulgarian border police officers to perform an inspection on the board of a Turkish vessel which had entered into the Bulgarian territorial waters of the Black Sea with the aim of carrying out illegal fishing. The Court found that the authorities had not acted negligently in the planning and preparation of the operation. Furthermore, it noted that the border police officers had done everything possible to try to save the life of Mr. Erkan. The ECHR also held that in order to establish the objective truth, the national authorities had conducted an effective investigation into the actions of the police officers during the incident, as well as into all the surrounding circumstances on the case, including the planning and control of the police operation. Due to the foregoing, the Court declared the applicants' complaints under Art. 2 of the Convention (right to life) manifestly ill-founded.

This judgment is a good example for performance of the state's obligations in the context of Art. 2.

c) *Sabev and others v. Bulgaria* (application no. 57004/14, decision as to the admissibility)

The applicant alleged that his sentence of life imprisonment without parole constituted inhuman and degrading treatment under Art. 3 of the Convention, and that he had no available effective remedy in violation of Art. 13 of the Convention.

The Court held that the continuous situation which had been the basis of the application had ended on 21 January 2013 (the first case in which, upon a proposal by the Clemency Commission, the Vice President had replaced a sentence of life imprisonment without parole to a life imprisonment). The application was filed on 8 September 2014 and it therefore has not met the six-month period under Art. 35 § 1 of the Convention.

d) *Korpachyova-Hofbauer v. Bulgaria* (application no. 56668/12, decision as to the admissibility)

The applicant, relying on Art. 3 of the Convention, stated that the conditions in which she had been placed for compulsory treatment at the state psychiatric hospital St. Ivan Rilski in Novi Iskar, had been such that her stay there might be described as inhuman and degrading treatment. The Court stated that according to the report of the Ombudsman of the Republic of Bulgaria, conditions in the hospital were far from satisfactory, but the applicant had not specified how the conditions had affected her. The Court emphasized that all the circumstances of the case must be assessed, taking into account also the relatively short time spent by the applicant in the hospital – about a month. ECHR held that she had suffered inconvenience due to the poor conditions, but it had not reached the minimum level of severity under Art. 3 of the Convention. Therefore, the Court found that the applicant's application was manifestly ill-founded.

e) *Tsonev v. Bulgaria* (application no. 44885/10, decision as to the admissibility)

Complaints under Art. 3, Art. 6 § 2 (presumption of innocence) and Art. 8 (right to respect for private life) of the Convention – the application was declared inadmissible because the Court found that the principle of confidentiality of negotiations in the procedure of reaching a friendly settlement was violated, which constituted an abuse of the right of individual application.

The case is related to the events surrounding the arrest of the applicant. After the Court communicated the application to the Government and within the negotiations to reach a possible friendly settlement, the applicant's lawyer publicly revealed details regarding the possible settlement, including the amount of compensation offered. The Court found that the applicant had breached the principle of confidentiality provided under Art. 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court and that such behavior constituted an abuse of the right of individual application under Art. 35 § 3 (a) of the Convention. The Court therefore declared the application inadmissible.

f) *Michev v. Bulgaria* (application no. 62335/10, decision as to the admissibility)

Complaints under Art. 5 §§ 1, 4 and 5 and Art. 13 of the Convention – the application was declared inadmissible because the Court found that the applicant had deliberately concealed information essential to the case which constituted an abuse of the right of individual application.

The applicant, relying on Art. 5 §§ 1, 4 and 5 and Art. 13 of the Convention, complained about his detention and the subsequent transfer to the Lovech Prison – Psychiatric Ward, and the inability to obtain compensation for the alleged violations. The Court found that in this case, there is an abuse of the right of application under Art.35 § 3 of the Convention because the applicant had not provided essential information for the case. He had not informed the Court, even after being explicitly requested, that back in 2012, he had lodged two claims for compensation before the national courts for compensation under the SMRDA – one against the Prosecution Office of the Republic of Bulgaria and one against the Pleven District Court. Under first claim, he had been awarded compensation, while proceedings on the second one were still pending.

g) *Lolova and Popova v. Bulgaria* (application no. 68053/10, decision as to the admissibility)

The case is related to proceedings under Art. 72 of the Family Code of 1985, in which the first applicant requested the court, in the absence of consent of the father, to authorize the trip of her daughter (the second applicant) abroad and the issuance of a passport. By a decision of 7 May 2009, the SCC upheld the trial court decision and thus the request of the first applicant was granted. The decision of the SCC entered into force on 3 July 3 2009 and the child was issued a passport on 30 July 30 2009. Before the entry into force of the decision of the SCC, the police had refused several times to issue a passport to the child.

The Court found that the applicants could not claim to be victims of a violation either under Art. 8 of the Convention, or under Art. 2 of Protocol no. 4 to the Convention (freedom of movement), as the lack of a passport of the child before 3 July 2009 had not affected her lawful right to leave the country since there had not been an enforceable court decision. The complaint was therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Art. 35 § 3 of the Convention and was dismissed. In view of this conclusion, the Court rejected the complaint under Art. 13 as incompatible *ratione materiae* with the provisions of the Convention as well.

The applicants' complaint under Art. 6 § 1 of the Convention relating to failure to comply with the decision of the administrative court of 29 September 29 2008 repealing the refusal to issue a passport was declared incompatible *ratione materiae* with the provisions of the Convention by the Court.

The applicants also claimed that the proceedings on their action under the SMRDA had not met the requirements of a fair trial under Art. 6 § 1 of the Convention. The Court declared that part of the application manifestly ill-founded.

h) *Danawar and others v. Bulgaria* (application no. 52843/07, decision as to the admissibility)

On 1 November 2000, Mr. Danawar was arrested in accordance with the orders for his expulsion and a ban from entering Bulgaria, and in December 2000, he was deported to Syria. The application before the ECHR was lodged in 2007 by him, his wife and his daughter, who are Bulgarian citizens. The applicants, relying on Art. 8 and Art. 13 (right to an effective remedy) of the Convention, complained about the expulsion of the applicant and the inadequacy and the excessive length of the subsequent proceedings for appealing those orders.

The Court held that the application should be rejected as the six-month period for submission provided for in the Convention had not been met. According to the ECHR, the six-month period had began to run no later than at the time of removal of Mr. Danawar from Bulgaria in December 2000, since the above-mentioned orders had not been subject to judicial review either at the time of their issuance or at the time of the first applicant's expulsion.

i) *Danailov and others v. Bulgaria* (application no. 47353/06, decision as to the admissibility)

The application is related to twenty-two proceedings for restitution of forests and land from the forests in the area of the town of Dospat. Initially, the Land Commission recognized the applicants' right of restitution, but in proceedings on a revindication claim brought by the State Forestry, it was found that the land in question lied within the territories of "yaylaks". The ECHR noted that under the national law, decisions of the administrative authority (Land Commission) in favour of the applicants were not binding on third parties. Moreover, the conclusion of the courts was that the applicants had not been entitled to restitution of land – hence the actions of the authorities in this case had been aimed at correcting the error which had previously occurred. The Court also did not find that the applicants suffered an excessive burden. The Court therefore concluded that the examination of the applicants' restitution rights in the context of judicial proceedings on the revindication claim and the conclusions that they had not fulfilled the conditions of restitution was not contrary to Art. 1 of Protocol no. 1 to the Convention.

CONCLUSION

This report was drawn up in implementation of the obligation of the Minister of Justice annually to submit information on the execution of the ECHR judgments against Bulgaria. The report sets out the most important issues in the execution of judgments, namely those establishing systematic or critical problems in the national legal system and requiring improvements in the legislation or in the case-law. It should be explicitly noted that the execution of the judgments of the European Court of Human Rights is an obligation of the state in the face of *all* its bodies and authorities, and the effectiveness of the adopted measures requires productive cooperation between the legislative, executive and judicial powers.

MINISTER OF JUSTICE:

EKATERINA ZAHARIEVA