Bulgarian Helsinki Committee

Bulgarian Prisoners' Rights Protection System

Country Report

2/9/2016

This publication has been produced with the financial support of the Criminal Justice Programme of the European Union. The contents of this publication are the sole responsibility of the University of Florence and can in no way be taken to reflect the views of the European Commission.

National Context

Bulgaria has a unified penitentiary system, with all custodial establishments falling under the jurisdiction of the Chief Directorate for the Execution of Sentences, a separate administrative unit within the Ministry of Justice. The Execution of Sentences and Detention Order Act 2009 (ESDOA) consolidates the main legal provisions, regulating the penitentiary system, including its organisation, operation and management; types of custodial establishments; security regimes; prisoners' status, rights and obligations; special provisions on the imprisonment of juveniles, on the execution of the sentences „life imprisonment" and „life imprisonment without commutation", as well as on the execution of the measure detention on remand.[1] Other national sources of legislation, applicable to the execution of sentences are the Criminal Procedure Code,[2] the Criminal Code,[3] and the Regulations for the implementation of ESDOA[4].
In accordance to ESDOAO, there are two general types of correctional facilities for convicted prisoners, serving custodial sentences – **prisons and correctional homes**. Adults, sentenced to „deprivation of liberty", „life imprisonment" or „life imprisonment without commutation" are detained in prisons. Juvenile offenders, aged 14-18, are allocated to correctional homes. Out of the three existing custodial punishments, juveniles and young adult offenders, not reached 20 years at the time of committing the crime, could be sentenced to „deprivation of liberty" only. Male and female prisoners are kept in separate correctional establishments. Persons on remand during criminal proceedings could be also detained in prisons. They are allocated in units, separate from the convicted prisoners. Further, as part of the organisational structure of each prison, dormitories of open and closed type might be established.[5] Correctional homes might have dormitories of open type. Prisons/ correctional homes, prison dormitories of closed type and prison dormitories open type are facilities under different security levels.
As of December 2015, the number of custodial establishments in Bulgaria is as follows:

- 11 prisons for adult male prisoners;
- one prison for adult female prisoners;
- two correctional homes for juvenile offenders (one male and one female);
- four closed-type male dormitories;
- 13 open-type male dormitories;
- two open-type female dormitories.

Investigative detention facilities (IDFs) are places for detention of persons on remand during criminal proceedings. IDFs are not specialised for different categories of detainees - males and females, adults and juveniles share the same IDFs but are placed in separate cells. The number of IDFs in Bulgaria as of 3 June 2015 is 34, compared to 42 in 2014.
According to the Bulgarian prison administration statistics, the **prison population** on 3 June 2015 was 7527. Out of this number, 7,239 were adult male prisoners, 240 – adult female prisoners, 48 – juvenile male prisoners and zero female juvenile prisoners.[6] 635 of all persons

[1] Execution of Sentences and Detention Orders Act (*Закон за изпълнение на наказанията и задържането под стража*) (ESDOA) (2009), available in Bulgarian at: http://www.lex.bg/bg/laws/ldoc/2135627067
[2] Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*) (2006), available in Bulgarian at: http://lex.bg/laws/ldoc/2135512224
[3] Criminal Code (*Наказателен кодекс*) (1968), available in Bulgarian at: http://lex.bg/bg/laws/ldoc/1589654529
[4] Regulations for the Implementation of the Execution of Sentences and Detention Orders Act (*Правилник за прилагане на Закона за изпълнение на наказанията и задържането под стража*) (2010), http://www.lex.bg/laws/ldoc/2135661301 .
[5] ESDOA (2009), Art. 41 and 42.
[6] Ibid.

held in prisons were awaiting trial, whereas 172 were sentenced to life imprisonment. As of 1 May 2015 the total number of prisoners convicted of offences against property was 56%.[7]
As of July 2015 the overall **capacity of the prison system** based on 4 sq. m. per person was 8,791 places. However, the methodology used by authorities to determine prison facilities' capacity is not publicly available. At that moment, officially, there were four **overcrowded prisons**, some of them handling double their capacity – Burgas at 230% capacity; Varna at 155% capacity; Vratsa at 125% capacity and Pazardzhik at 101% capacity[8]. Two open-type prison dormitories – Pleven at 135 % capacity and Stroitel at 123 % capacity and one closed-type dormitory – Vit at 124 % capacity, were also overcrowded.[9]
Most recently, the Bulgarian authorities have been pressured by different international human rights bodies, which using different legal instruments have sent very important messages about the extremely bad conditions in the Bulgarian prisons, as well as other systematic problems, including access to healthcare, physical abuse, inter-prisoner violence and corruption.
In January 2015 the European Court of Human Rights (ECtHR) adopted a **pilot judgment against Bulgaria** in the case of *Neshkov and others v. Bulgaria*.[10] The Court found that the conditions in which four of the applicants were detained had amounted to inhuman and degrading treatment, notably on account of overcrowding, poor hygiene and deplorable material conditions. The ECtHR established also that there were no effective preventive or compensatory remedies available to inmates in Bulgaria, victims of inhuman and degrading treatment in prisons.
Following the pilot judgment, on 26 March 2015 the European Committee for Prevention of Torture (CPT) issued an unprecedented **public statement concerning Bulgaria**.[11] The Committee indicated the lack of substantial progress of the Bulgarian authorities in dealing with a number of long-standing concerns, some of them dating back to the very first periodic visit to Bulgaria in 1995.
One particularly alarming problem, according to the CPT, was the situation as regards physical ill-treatment of prisoners by staff in a number of prisons. Other **problems, identified by the CPT** throughout the years, include inter-prisoner violence, prison overcrowding, poor material condition, including lack of toilets and running water in the cells of some prisons inadequate prison health-care services and low custodial staffing levels, as well as concerns related to discipline, segregation and contact with the outside world, corruption. The CPT also recommended the gradually phasing-out of all IDFs, with the view to ensuring that all remand prisoners would eventually be accommodated in prisons.[12]
It has to be underlined that many of the problems accumulated in the Bulgarian penitentiary system over decades persist for reasons such as chronic underfinancing, understaffing,

[7] Chief Directorate for the Execution of Sentences, *Information for the prison population in Bulgaria as of 1 May 2015, presented by types of offences committed.*
[8] The reason for the overcrowding in the Pazardzhik prison was the ongoing refurbishment in the Stara Zagora prison and the temporary transfer of prisoners.
[9] Secretariat General of the Committee of Ministers of the Council of Europe, *Communication form Bulgaria concerning the case of Neshkov and others and the Kehayov group of cases against Bulgaria* (Applications No. 36925/10, 41035/98), DH-DD(2015) 755 rev, 01 September 2015.
[10] ECtHR, *Neshkov and others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, pilot judgment of 27 January 2015.
[11] *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Public Statement concerning Bulgaria*, CPT/ Inf (2015)17, available at: http://www.cpt.coe.int/documents/bgr/2015-17-inf-eng.pdf.
[12] *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 3 April 2014*, CPT/ Inf (2015)12, para. 48., available at: http://www.cpt.coe.int/documents/bgr/2015-12-inf-eng.pdf.

stigmatization and isolation of the penitentiary system within the larger system of state administration, outdated legislation and practices, pervasive corruption.

I. ECtHR Case Law

1. Violations of Article 3 of the Convention

1.1. Conditions of Imprisonment and Overcrowding: *Kehayov* Group of Cases

Litigation on inhuman and degrading conditions in Bulgarian penitentiary institutions produced a substantial body of jurisprudence by the ECtHR over the past 18 years. The *Kehayov* group of cases,[13] which is under enhanced supervision by the Council of Europe (CoE) Committee of Ministers (CM) , concerns inhuman and degrading treatment (Article 3 of the Convention) of the applicants due to poor conditions in prisons and IDFs for the period 1996 – 2014, owing in particular to overcrowding, poor sanitary and material conditions, no regular access to running water or to a toilet, limited possibilities for out-of-cell activities, no access to natural light, bad quality of the food provided and prolonged application of a special restrictive penitentiary regime combined with the effects of inadequate material conditions in prisons. As of December 2015, the *Kehayov* group of cases comprises of 24 judgments of the ECtHR against Bulgaria. Certain cases[14] concern in addition the inadequacy of medical care in prison and the *Isyar*[15] case concerns the adaptation difficulties of an imprisoned foreigner. Some cases[16] address the lack of effective remedies in respect to poor conditions of detention, in particular due to the formalistic approach taken by the domestic courts when deciding on claims for damages under the State and Municipalities Responsibility for Damages Act (SMRDA)[17] and the unavailability of a remedy capable of leading to any improvement of the conditions of detention (violations of Article 13 in conjunction with Article 3 of the convention).

The first Action plan of the Bulgarian Government for the implementation of the judgments in the group was developed and submitted to the CM in 2013 and was then revised in 2014. In July 2015 the Government proposed a new Action plan, which involved measures for the implementation of both *Kehayov* group of cases and *Neshkov* pilot judgment.

1.2. Life imprisonment without commutation

According to the established case-law of the ECtHR, the prison regime under which those sentenced to life imprisonment in Bulgaria are automatically placed violates Article 3 of the ECtHR. [18] The Execution of Sentences Act of 1969 and the Execution of Sentences and Detention Order Act 2009, which superseded the Act of 1969, envisaged that sentencing to life

[13] See more at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=kehayov&StateCode=BGR&SectionCode=

[14] ECtHR, *Shishmanov v. Bulgaria*, no.37449/02, judgment of 08 January 2009; *Gavazov v. Bulgaria*, no. 54659/00, judgment of 06 March 2008.

[15] ECtHR, *Isyar v. Bulgaria*, no. 391/03, judgment of 20 November 2008.

[16] ECtHR, *Harakchiev and Tolumov v. Bulgaria*, no. 15018/11, 61199/12, judgment of 08 July 2014; *Radkov and Sabev v. Bulgaria*, no. 18938/07, 36069/09, judgment of 27 May 2014; *Shahanov v. Bulgaria*, no. 16391/05, judgment of 10 January 2012; *Yordanov v. Bulgaria*, no. 73196/12, communicated on 20 March 2014.

[17] State and Municipalities Responsibility for Damage Act (*Закон за отговорността на държавата и общините за вреди*) (1989) (SMRDA), available in Bulgarian at: http://www.lex.bg/laws/ldoc/2131785730.

[18] ECtHR, *Sabev. v. Bulgaria*, no 27887/06, judgment of 28 May 2013; ECtHR, *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11, 61199/12, judgment of 08 July 2014; *Manolov v. Bulgaria*, no.23810/05, judgment of 4 November 2014, *Halil Adem Hasan v. Bulgaria*, no 4374/05, judgment of 10 March 2015, *Dimitrov and Ribov v. Bulgaria*, no. 34846/08, judgment of 17 November 2015, *Radev v. Bulgaria*, no.37994/09, judgment of 17 November 2015.

imprisonment with or without commutation includes placement of the prisoner under "special regime". Persons placed under the "special regime" must be kept in constantly locked cells and be under heightened supervision. Article 198(1) of the ESDOA provides that a life prisoner may be placed under a more lenient regime if he or she has been of good conduct and has served not less than five years of his or her sentence. Life prisoners may be placed with the general prison population and take part in common work, training, educational activities, sport, or other activities by decision of the Execution of Sentences Commission on the basis of a personality assessment, provided that they have already been placed under the "severe regime".

When assessing the complaints of the Bulgarian applicants, the Court reiterated the general principles laid down in its case-law, governing the application of Article 3 of the Convention to the regime and conditions of detention of life prisoners. The leading principle read that an impoverished regime which isolated a life prisoner for a long time was likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities[19], and that such a regime could not be regarded as warranted unless based on proper risk considerations, and should not be maintained after such risk has subsided.[20]

In the *Harakchiev and Tolumov v. Bulgaria* judgment, the Court made a detailed assessment of the situation of the two applicants under the above stated principle and taking into close consideration European soft law standards on prisoners' rights protection.[21]

Further, the Court held that, in violation of Article 13 of the Convention the applicants did not have at their disposal effective domestic remedies in respect of their complaint concerning the conditions of their detention. Established domestic compensatory remedies could not provide adequate relief to the applicants, because they could not lead to an improvement of the regime and conditions of their detention.

In the *Harakchiev and Tolumov v. Bulgaria*, with respect to the first applicant, and in the *Manolov v. Bulgaria*, the ECtHR found violations of Article 3 in relation to the life sentence without commutation for the lack of perspectives for release.[22] To arrive at this conclusion, the Court first stipulated that for a certain period of time the life sentences without commutation under the applicable Bulgarian legislation could not had been regarded as reducible as required under Convention law. Second, the Court notes that the manner in which the presidential power of clemency had been exercised before the early months of 2012[23] had been unclear, and there had existed no concrete examples showing that persons serving sentences of life imprisonment without commutation could hope to benefit from the exercise of that power and obtain an adjustment of their sentence. Life prisoners should have a chance, however remote, to someday regain their freedom. For that chance to be genuine,

[19] ECtHR, *Iorgov v. Bulgaria*, no. 40653/98, judgment of 11 March 2004, §§ 83-84.
[20] ECtHR, *Sabev. v. Bulgaria*, no 27887/06, judgment of 28 May 2013, § 97.
[21] ECtHR, *Harakchiev and Tolumov v. Bulgaria*, no. 15018/11, 61199/12, judgment of 08 July 2014, § 203-214.
[22] ECtHR, *Harakchiev and Tolumov v. Bulgaria*, no. 15018/11, 61199/12, judgment of 08 July 2014; *Manolov v. Bulgaria*, no. 23810/05, judgment of 04 November 2014.
[23] In two decrees of 23 January 2012 the newly elected President, who had taken office the previous day, decided, like his predecessors, to delegate the power of clemency to the Vice-President. He also set up a Clemency Commission to advise the Vice-President in the exercise of that power, and laid down rules of procedure governing the work of the Commission. Rule 1(3) of those Rules provides that in its work the Commission must take into account, inter alia, relevant case-law of international courts and other bodies on the interpretation and application of international human rights instruments in force in respect of Bulgaria. The Commission deliberates twice a month (Rule 5(2)). Each request for clemency is allocated to one member of the Commission, who has to report on it (Rule 4(1)) within two weeks (Rule 6). Decisions are taken by a majority, with the chairperson having the casting vote in the case of a tie (Rule 5(4)). The chairperson then apprises the Vice-President of the Commission's recommendations (Rule 4(1)(5)). Prisoners who have requested clemency must be informed in writing of the Vice-President's decision, and every three months the Commission has to publish a report on its activities.

those prisoners had to be given a proper opportunity to rehabilitate themselves.[24] Even though States enjoyed large margin of appreciation to decide on the regime and the conditions of life imprisonment, a particularly stringent regime for a prolonged time led to a breach of Article 3 of the Convention.

In *Harakchiev and Tolumov*, the Court, under Article 46, adopted an obligation upon the state to implement general measures to reform, preferably by means of legislation, the legal framework governing the prison regime applicable to persons sentenced to life imprisonment with or without parole. The Court recommended: 1) the removing of the automatic application of the highly restrictive prison regime for an initial period of at least five years, 2) the adoption of provisions envisaging that a special security regime can only be imposed – and maintained – on the basis of an individual risk assessment of each life prisoner, and applied for no longer than strictly necessary.

Harakchiev and Tolumov judgment, which is included in the *Kahayov* group of cases, is under enhanced supervision of the CoE Committee of Ministers. Following the Court's recommendation and in compliance with measures, proposed in the Government's Action plan for the execution of the judgment, in November 2015 the Ministry of Justice presented draft amendments to ESDOA. According to the proposal, the special security regime of life prisoners should be subject to automatic review by the prison governor every six month following the first year of imprisonment. The decision of the prison governor should be subject to appeal before the administrative court.

1.3. Use of handcuffs and forced shaving of prisoner's hair

In the *Radkov and Sabev* judgment[25] ECtHR found a violation of Article 3 in respect of handcuffing the applicants at a court hearing even though handcuffing did not normally give rise to an issue under that Article. However, in this case the Court established that the applicants were heard in an already secure environment and prison wardens were also present at the hearing. The Court found that the risk of absconding, resorting to force or otherwise disrupting the hearing has been already minimised and therefore handcuffing the applicants was not justified as there were not any particular reasons to this regard and concluded that the treatment was "degrading".[26]

In this case, the Court found that the compensatory remedies available under the SMRDA to be unsatisfactory and therefore found violations of Article 13 of the Convention. This remedy applies exclusively to actions and omissions by administrative bodies and as in this case[27] the applicants complained of their handcuffing during a court hearing, which was not imposed on them by an administrative body decision. The responsibility for maintaining order during a court hearing lies with the judge presiding the hearing and thus the applicants lacked an effective remedy to obtain a redress for the alleged degrading treatment.

In the *Kashavelov* case[28] the ECtHR found a violation of Article 3 due to the systematic use of handcuffs on the applicant (each time when taken out of his cell, even when taking his daily walk), which has started about thirteen years prior the Court's judgment and the prison authorities have not pointed out specific incidents during this period. Therefore the systematic handcuffing of the applicant was a measure that lacked sufficient justification and was degrading treatment.[29] At present, the case is under enhanced supervision of the CoE Committee of Ministers. When the case was last assessed, the Committee emphasised that

[24] ECtHR; *Manolov v. Bulgaria*, no. 23810/05, judgment of 04 November 2014, § 51.
[25] ECtHR, *Radkov and Sabev v. Bulgaria*, nos. 18938/07, 36069/09, judgment of 27 May 2014.
[26] ECtHR, *Radkov and Sabev v. Bulgaria*, nos. 18938/07, 36069/09, judgment of 27 May 2014, § 34.
[27] ECtHR, *Radkov and Sabev v. Bulgaria*, nos. 18938/07, 36069/09, judgment of 27 May 2014, § 35 et seq.
[28] ECtHR, *Kashavelov v. Bulgaria*, no. 891/05, judgment of 20 January 2011.
[29] ECtHR, *Kashavelov v. Bulgaria*, no. 891/05, judgment of 20 January 2011, § 38-40.

"further clarification is required on the existence of a legal avenue to challenge before the administrative court a decision of the prison governor concerning the use of handcuffs, if it is maintained".[30]

Yankov v. Bulgaria case[31] was the first occasion on which ECtHR had to rule on whether the forced shaving off of a prisoner's hair may constitute degrading treatment contrary to Article 3 of the Convention. To decide the case, the Court referred to other acts affecting the dignity of detainees such as strip searching and handcuffing. The Court considered that the forced shaving off of detainees' hair was in principle an act which may have the effect of diminishing their human dignity or may arouse in them feelings of inferiority capable of humiliating and debasing them. The ECtHR further stipulated that whether or not the minimum threshold of severity was reached and, consequently, whether or not the treatment complained of constituted degrading treatment contrary to Article 3 of the Convention would depend on the particular facts of the case, including the victim's personal circumstances, the context in which the impugned act was carried out and its aim. In applying this test, the ECtHR considered that the applicant's hair was shaved off by a prison guard not as a hygienic measure, but in the context of a punishment imposed on him for writing critical and offensive remarks about prison warders; that the applicant was 55-year old and that he appeared at a public hearing nine days after his hair was shaved off. Thus, the Court found that the act of shaving off of the applicant's hair constituted an unjustified treatment of sufficient severity to be characterised as degrading within the meaning of Article 3 of the Convention. Further, the Court ruled that the lack of remedies capable of preventing the shaving of the applicants' head - an act without legal basis and thus not directly related to the disciplinary proceedings, constituted violation of Article 13 of the Convention.

2. Violations of Article 8 of the Convention

In several judgments ECtHR found violations of Article 8 on issues related to arbitrary monitoring of prisoners' correspondence.[32] The Bulgarian legislation before the adoption of the new ESDOA in 2009 provided for systematic monitoring of the correspondence of prisoners without weighing the necessity on a case by case basis. This required legislative reform. In April 2009, the Parliament adopted the new piece of legislation, which did not contain a provision for the systematic monitoring of prisoners' correspondence. Sentenced prisoners were allowed free communications, except where the prison director decides to restrict them if some persons (not including lawyers or close relatives) "exercise negative influence on the prisoner".

In a recent application to the ECtHR,[33] the applicant, who is an Australian citizen, complains of the denial of his request for transfer to serve the rest of his sentence in his country of origin. According to the Bulgarian Criminal Procedure Code (art. 453 *et seq*.) the Prosecutor General decides on the transfer of sentenced persons. The Prosecutor General's act is not subject to a judicial review before any courts including administrative since such act does not constitute

[30] https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1144/7&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

[31] ECtHR, *Yankov v. Bulgaria*, no. 39084/97, judgment of 11 December 2003.

[32] ECtHR, *Petrov v. Bulgaria*, no. 15197/02, judgment of 25 May 2008; *Bochev v. Bulgaria*, no. 73481/01, judgment of 13 November 2008; *Tsonyo Tsonev v. Bulgaria*, no. 33726/03, judgment of 1 October 2009; *Stoyan Dimitrov v. Bulgaria*, no. 36275/02, judgment of 22 October 2009; *Marin Kostov v. Bulgaria*, no. 13801/07, judgment of 24 July 2012; *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11, 61199/12, judgment of 08 July 2014, Dimcho Dimov v. Bulgaria, no. 57123/08, judgment of 16 December 2014.

[33] ECtHR, *Palfreeman v. Bulgaria*, no. 59779/14, the ECtHR gave priority treatment to this application in December 2014.

an individual administrative act.[34] The applicant submits that the denial by the Prosecutor General of his transfer constitutes a violation of his right to family life under Article 8 of the Convention and that there is no effective remedy against this violation under the Bulgarian system.

3. Violations of Article 10 of Convention

In *Yankov v. Bulgaria*[35] case ECtHR found violation of Article 10 of the Convention in relation to a disciplinary punishment imposed on a prisoner for making offensive remarks about prison wardens. According to Article 46 of the regulations implementing the Execution of Sentences Act from 1969 in force at the relevant time, when a prisoner's writings and appeals contained defaming and offensive language he might have been subject to disciplinary and criminal punishment. The Court considered that the State's intervention in the applicant's freedom of expression did not pass the test of proportionality as it failed to establish fair balance between the competing rights and interests: the applicant's right to freedom of expression, on the one hand, and the need to maintain the authority of the judiciary and to protect the reputation of civil servants, on the other. By punishing the applicant with seven days' confinement in a disciplinary cell for having included moderately offensive remarks in a private manuscript critical of the justice system, which had not been circulated among the detainees, the authorities overstepped their margin of appreciation. Ten years later, in 2013, the CoE Committee of Ministers closed the examination of the judgment implementation by Resolution CM/ResDH(2013)102. The decision was made with regard to Article 90 (6) of the newly adopted ESDOA, which expressly stipulates that prisoners may not be subject to disciplinary punishment because of having made a request or lodged a complaint.

Similarly, in *Marin Kostov v. Bulgaria* judgment[36] the applicant was punished by the prison administration with fourteen days confinement in a disciplinary cell for having made a complaint to the public prosecutor that was perceived as defamatory. Making reference to *Yankov* case, the Court observed that in the context of prison discipline "regard must be had to the particular vulnerability of persons in custody and therefore the authorities must provide particularly solid justification when punishing prisoners for having made allegedly false accusations against the penitentiary authorities".[37] Further, in its assessment of the fact on case, the Court considered the following circumstances: the applicant's statements were made in the context of a dispute between him and the prison administration on the restriction of a clearly personal right, which is the right to receive a parcel from his family; they were made in a letter to the public prosecutor, who is competent to supervise penitentiary institutions and deal with such disputes; applicant did not resort to abusive, strong or intemperate language; the letter did not pose a threat to the prison officials' authority and public reputation, as its content was not made known to the general public or to other prisoner; the applicant was punished by the maximum period of isolation permissible by law; none of these factors was adequately addressed by the domestic court which reviewed the applicant's punishment. Under these circumstances, the ECtHR found violation of Article 10. In 2013 the CoE Committee of Ministers closed the examination of the execution of the judgment by Resolution CM/ResDH (2013)138. Once again, the decision was made with regard to Article 90 (6) of the newly adopted ESDOA.

[34] According to a ruling of Sofia City Administrative Court of 28 October 2013 and sustained in Ruling No. 5591 of the Supreme Administrative Court of 24 April 2014.
[35] ECtHR, *Yankov v. Bulgaria*, no. 39084/97, judgment of 11 December 2003.
[36] ECtHR, *Marin Kostov v. Bulgaria,* no. 13801/07, judgment of 24 July 2012.
[37] ECtHR, *Marin Kostov v. Bulgaria,* no. 13801/07, judgment of 24 July 2012, §44.

Although the CoE Committee of Ministers considered both *Yankov* and *Marin Kostov* judgments to be executed, the national legislation is still interpreted as to allow for the imposition of disciplinary punishments on prisoners for offensive remarks and statements about prison administration, based on Article 100 (1) of the ESDOA.

4. *Neshkov and Others v. Bulgaria* Pilot Judgment

The ever-worsening situation in prisons and the lack of effective remedies culminated in *Neshkov and others v. Bulgaria* pilot judgment of the ECtHR, delivered on 27 January 2015. The ECtHR unanimously held that poor conditions of detention in various correctional facilities in Bulgaria and the state of excessive overcrowding breached Article 3 of the Convention. It further found violation of Article 13 in respect to the lack of effective remedies by which prisoners could seek redress for poor material conditions and overcrowding. The Court justified the pilot-judgment procedure with the systematic, serious and persistent nature of the problems identified in the Bulgarian prison system.

The case concerned conditions of detention in various corrective facilities in Bulgaria. The applicants alleged a violation of Article 3 of the Convention and the first applicant - Mr Neshkov, also alleged a violation of Article 13 on account of the lack of an effective domestic remedy.

Article 13 of the Convention

1) National law and practice on the existing compensatory remedy

The Court had previously accepted that proceedings for compensation under Article 1 of the SMRDA could be regarded as an effective domestic remedy in respect of complaints under Article 3 of the Convention relating to conditions of detention in cases where the alleged breach had come to an end. However, in view of the manner in which the Bulgarian courts' case-law had evolved the Court no longer considered the remedy effective. The two domestic cases brought by the first applicant highlighted a series of problems: a failure to make clear the specific acts or omissions the prisoner was required to establish, an overly strict burden of proof, a tendency to assess individual aspects of the conditions of detention rather than their cumulative impact, a failure to recognise that even briefly non-compliant conditions must be presumed to cause non-pecuniary damage and the application of domestic time-limits without taking into account the continuous nature of the overall situation. The two claims for damages the first applicant had brought under section 1 of the 1988 Act could not therefore be regarded as an effective remedy. The issues faced appeared representative of those met by a number of persons who had sought damages under the 1988 Act in respect of the conditions of their detention.

2) National law and practice on the existing preventive remedy

Prisoners who continued to be held in non-compliant conditions required a preventive remedy capable of rapidly bringing the ongoing violation to an end. However no such remedy existed under Bulgarian law. In particular, although in theory Articles 250 (1), 256 and 257 of the Administrative Procedure Code[38] could offer injunctive relief, they did not appear to have been interpreted by the administrative courts in a way that enabled prisoners to obtain a general improvement in their conditions of confinement. In any event, injunctions were of little practical use where overcrowding was systemic and required substantive reform. Other forms of relief, such as a complaint to the prosecutor responsible for overseeing the facility or a complaint to the Ombudsman were not considered effective either.

Conclusion of the Court

[38] Administrative Procedure Code (*Административно-процесуален кодекс*) (2006), available in Bulgarian at: http://www.lex.bg/laws/ldoc/2135521015.

Thus, the Court unanimously found violation of Article 13. The Court also found, unanimously, a violation of Article 3 of the Convention in respect of the conditions of detention endured by four of the applicants, especially as regards overcrowding, hygiene and access to the toilets, and access to health care.[39]

General measures under Article 46 of the Convention

In its reasoning to apply the pilot judgment procedure, the Court acknowledged that the number of applications against Bulgaria, containing complaints against conditions in detention – 40, may seem insignificant in comparison with those in other pilot cases. However, the Court underlined that the identification of a systemic problem that justifies the application of the pilot-judgment procedure was not necessarily linked to the number of applications that are already pending; the potential inflow of future cases was also an important consideration. On the basis of different international and national reports and submissions, the Court observed that many prisoners in Bulgaria were kept in overcrowded and poor conditions and that they were likely to face obstacles when seeking monetary compensation in respect of these conditions, and did not have an effective remedy enabling them to obtain their improvement.

On the conditions of detention: According to the Court, there were two issues Bulgaria needed to tackle. The first concerned overcrowding for which there were a number of potential solutions including the construction of new facilities, better allocation of prisoners in existing facilities, a reduction in the number of persons serving custodial sentences, reduced recourse to imprisonment, shorter custodial sentences and alternatives to custody. The second concerned the material conditions of detention and hygiene. At this stage, the only solution was major renovation works or the replacement of existing buildings with new ones. This needed to be done without any delay.

On the preventive remedy: In the Court's view, the best way of putting a preventive remedy into place would be to set up a special authority to supervise correctional facilities. A special authority normally produces speedier results than would be the case with ordinary judicial proceedings. To be considered an effective remedy, the authority should have the power to monitor breaches of prisoners' rights, be independent from the authorities in charge of the penitentiary system, have the power and duty to investigate complaints with the participation of the complainant, and be capable of rendering binding and enforceable decisions. Other options would be to set up a procedure before existing authorities such as public prosecutors or to mould existing forms of injunctive relief to accommodate grievances relating to conditions of detention.

On the compensatory remedy: The Court stipulates that one solution would be a general remedy allowing those complaining of Convention breaches to seek the vindication of their rights in a procedure specially designed for that purpose. Another option would be to put in place special rules laying down in detail the manner in which claims concerning conditions of detention are examined and determined. Redress could take the form of monetary compensation or, for those still in custody, a proportionate reduction in sentence. Any remedy would have to operate retrospectively.

The required preventive and compensatory remedies should be made available within eighteen months after the Court's judgment became final. The Court decided not to adjourn the examination of other similar cases against Bulgaria.

Implementation of the pilot judgment

The pilot judgment is placed under enhanced supervision by the CM of the Council of Europe. Its state of execution is examined together with the *Kehayov* group of case. In 2015, the

[39] ECtHR, *Neshkov and others v. Bulgaria,* nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, para. 256.

Bulgarian government has submitted two revised action plans for the executions of the pilot judgment and the *Kehayov* group of cases. The judgment was translated into Bulgarian language in the first half of 2015, prior to its entry into force. The 18-month deadline, granted to the national authorities to create effective preventive and compensatory remedies expires on 1 December 2016.

II. National Legal System for Prisoners' Rights Protection

As a relic from the communist era, Bulgarian penitentiary law represents an outdated mode of thought and suffers serious deficiencies. It was first codified in 1969 with the passage of the Execution of Sentences Act. In 2009 a new Execution of Sentences and Detention Order Act was adopted, without, however, marking substantive modernization of the penitentiary law and principles. Among other shortcomings, the new piece of legislation did not manage to guarantee protection of prisoners' rights, in a manner equivalent to the protection guaranteed to other citizens under the law. Prisoners in Bulgaria continue to be deprived of various human rights, solely by virtue of their imprisonment.

Limited access to judicial review is another very problematic characteristic of the Bulgarian prison system. Both in theory and in practice, powers of the penitentiary authorities continue to be interpreted as a special category of powers, exercised in a legal vacuum, not bound by the principles of general administrative law and often not subject to judicial control. It is broadly accepted that if not stipulated otherwise in the law, decisions made by penitentiary authorities are subject only to administrative supervision, exercised by an administrative authority higher up in the hierarchy. In 2015 there were two major developments that initially seemed to have the potential to challenge this legal and theoretical standing. However, the results obtained so far are not convincing in showing actual improvement in the situation.

First, in May 2015 a joint panel of judges of the Supreme Administrative Court and the Supreme Court of Cassation adopted an interpretative decision, unifying the contradictory case law on disputes over jurisdiction on damages claims.[40] Section eight of the decision addressed the following question: which is the court competent to hear claims for damages for unlawful decisions, acts or omissions by prison administration in the course of implementing the sentences "deprivation of liberty" and probation, as well as the pre-trial detention measure – general courts or administrative courts. The joint panel of supreme judges ruled unanimously that the competent jurisdiction is the administrative court, stating clearly that the prison administration is part of the executive power and as such, its decisions and acts are administrative in nature. Nevertheless, even after the adoption of the interpretative decision, the Supreme Administrative Court continues to examine prison administration's decisions and actions outside the scope of application of administrative law.[41]

Second, the amendments in the ESDOA, proposed by the Ministry of Justice in November 2015, envisage, among other measures, new opportunities for judicial control over acts of administrative decisions, concerning prisoners such as decisions for transfer from one correctional establishment to another. However, this approach might happen to be harmful since it does not recognise prisoners' access to judicial control as a general rule, but rather as an exception. For example, disciplinary punishments, other than isolation in a disciplinary

[40] Joint panel of judges of the Supreme Administrative Court and the Supreme Court of Cassation, Interpretative Decision of 19 May 2015 on case No. 2/2014.

[41] Supreme Administrative Court, Decision of 24 September 2015 on administrative case No. 10084/2015.

cell, remain without possibility to be appealed before court. Therefore, it could be speculated that the draft law reinforces the application of a different, lower legal standard for protection of prisoners' rights.

The inadequacy of the Bulgarian legal system of prisoners' rights protection with respect to poor material conditions and overcrowding was in the focus of the *Neshkov and others v. Bulgaria* pilot judgment of the ECtHR. With the judgment the ECtHR imposed an obligation on the Bulgarian government to introduce effective preventive and compensatory remedies to victims of inhuman and degrading treatment in prisons.

The next two sections (Section A and Section B) of the present chapter will provide a brief presentation of the administrative and judicial mechanisms for prisoners' rights protection against overcrowding and conditions of detention in Bulgaria, available at the moment of the pilot judgment delivery. It will conclude with an overview of the reforms in the prisoners' rights protection system proposed by the government, following ECtHR pilot judgment and CPT public statement against Bulgaria (Section C).

A. Preventive Remedies

With the *Neshkov and others v. Bulgaria* pilot judgment, the debates over the availability of effective preventive remedies against inhuman and degrading treatment of prisoners as regards to poor material conditions and overcrowding in prisons in Bulgaria have been exhausted. The Court anonymously found that none of the existing domestic remedies or the combination of them – injunction proceedings, possibilities for transfer from one prison facility to another, complaint procedures before the prosecutor and the Ombudsman, were in position to bring improvement in the conditions of detention of prisoners.

1. Administrative Remedies

1.1. Remedies under Execution of Sentences and Detention Order Act 2009

1.1.1 General Complaint Procedure in Prisons

The legal regulation of the general internal complaint procedure available to prisoners is limited to Article 90 of ESDOA and Articles 77 and 78 of the Regulation for the implementation of ESDOA. It applies to all complaints and requests regardless of their nature, recipients, seriousness or urgency.

Article 90 (1) of ESDOA expressly recognises the right of prisoners to make requests and complaints in writing as well as to appear before the prison governor in person. Acting on express authorization, lawyers and non-governmental organisations' representatives may also lodge requests and complaints on behalf of prisoners.[42] The procedure is limited to individual complaints and requests and does not cover appeals of measures of general application. It is accessible to both convicted prisoners and pre-trial detainees. [43] Upon admission, prisoners are informed orally of their rights and obligations, including their right to make complaints, but do not receive written copy of this information. No standard complaint form exists. Further, Article 77 of the Regulations for Implementation of ESDOA adds that each request and complaint has to be registered in a special book, including the date of its receipt and dispatch, the name of the prisoner, the body to which it is addressed, the subject and answer. This provision suggests that no complaints and requests could be made on confidential basis. In practice, complaints are registered if addressed to the prison

[42] ESDOA, Art. 90(2).

[43] ESDOA, Art. 240: "Save insofar as otherwise provided for in this Part, the provisions regarding the persons sentenced to deprivation of liberty shall furthermore apply to the accused and the defendants who are detained in custody as a precautionary measure to secure the appearance thereof".

governor or to another recipient through the prison governor. In most penitentiary facilities complaints addressed to recipients outside the prison could be made confidential if sent as regular mail. However, the confidentiality of the regular mail is not always guaranteed.
The exact manner in which the inmates should hand in their complaints – where and to whom, is left unclear. The Prison and Prison Dormitories Internal Rules, adopted by the Minister of Justice, stipulates that complaints and requests in sealed envelopes are to be placed in special boxes, which are kept locked, whereas the procedure for opening the boxes is to be established individually by each prison governor. Such boxes, however, are not installed in all prisons.
Complaints and requests directed to a body outside the prison are to be dispatched within three days.[44] All postage expenses incurred by prisoners, irrespective of the category of correspondence or the recipient, are borne by the sender. It is only for prisoners who are ascertained to have no financial means that the costs for correspondence are covered by the penitentiary. Prior to the amendments to Article 77 of the Regulations for Implementation of ESDOA which came into force in August 2014, the postage expenses on complaints and requests related to the implementation of sentences were covered by the prison budget. Following the amendments, this form of financial support, facilitating prisoners' access to justice, was taken off.
The law stipulates that any re-lodged requests and complaints are to be considered if they state new circumstances. Complaints and requests, addressed to the Chief Directorate for the Executions of Sentences are to be dealt with within a period of two weeks or one month, provided that the case is complex and requires further investigation. Importantly, Article 90 (5) of ESDOA prohibits the imposition of disciplinary punishments in retaliation for requests or complaints made by prisoners. The law does not prescribe specific division of competences where two or more systems are involved in the protection of prisoners' rights.
The above-described procedure has a general applicability to the administration of complaints and requests made by prisoners to the penitentiary administration in relation to prison material conditions, clothing, personal hygiene, food, exercise medical services, visits, correspondence and phone calls; access to employment, education and vocational training; complaints against prison guards, other staff or inmates. The penitentiary authorities, having general competence to receive, examine and settle complaints from prisoners are the Minister of Justice, the Chief Director of the Chief Directorate for the Execution of Sentences and the prison governors.
As demonstrated, the regulation of the general complaint procedure available in prisons is insufficient and its formulation is vague enough to allow variable interpretations and arbitrary implementation. The law does not specify any minimum procedural guarantees such as access to legal aid, right to interpretation or translation, right to reasoned decision-making, right to appeal. Other vital procedural aspects, including burden of proof, evidence collection, assistance to prisoners who have literacy problems and rapidity of the proceedings are also left unregulated.

1.1.2. Other Procedures

Along with the general complaint procedure, the ESDOA provides for a number of other special internal procedures that might be examined in the light of the prevention of inhuman and degrading treatment with respect to poor material conditions, overcrowding and access to healthcare in prisons. One such procedure, discussed also in the *Neshkov* pilot judgment of the ECtHR, is the procedure for transferring inmates from one prison to another.

[44] ESDOA, Art. 77(2).

Following their initial allocation to a penitentiary facility, prisoners may apply to be transferred to a different facility, operating under the same security category. Requests for transfer could be made also by prison governors and prisoners' relatives. Prisoners have no legal right to be transferred but a transfer might be considered for one of the following grounds, listed in Article 62 (1) of ESDOA: school attendance or vocational training, hospitalization, change of address of family members or relatives, psychological incompatibility with other inmates, conflicts with the prison guards or other safety or security reasons. The transfer decision is up to the discretion of the Chief Director. Unsatisfactory decisions could be challenged before the Minister of Justice,[45] whereas judicial review is not expressly provided for by the law. There are no specific rules, governing the review procedure.

In *Neshkov and others v. Bulgaria* pilot judgment, the ECtHR states that the transfer procedure could not be considered as an effective preventive remedy in respect of situations of overcrowding and poor material conditions in the system as a whole. It emphasises that "under Bulgarian law decisions of the prison authorities on transfers between prisons are apparently regarded as fully discretionary and not compellable by means of an injunction […].Inmates do not have a right to be transferred if they so request, which means that the possibility is not a remedy for the purposes of Article 13 of the Convention […]."[46]

1.2. Administrative Remedies, Outside the Penitentiary System

1.2.1. Inspectorate at the Ministry of Justice

The Inspectorate at the Ministry of Justice (Inspectorate) is a unit for internal administrative control. It exists by virtue of Article 46 (1) of the Administrative Act, which provides for the establishment of an inspectorate at each ministry. The Inspectorate has a general mandate, without specialization in penitentiary law and policy. It carries out activities related to monitoring, prevention and revealing of corruption practices, investigates signals for corruption and other violations of representatives of the Ministry of Justice, refers cases to the prosecuting authorities for investigation, proposes the initiation of disciplinary proceedings against Ministry of Justice officials. The Inspectorate makes internal investigations following annually approved plan or ad hoc, as well as upon individual complaints. The number of inspectors is critically low - as of November 2015, there were six inspectors.

The procedural aspects of the administration of complaints and requests by the Inspectorate are governed by the Chapter Eight of the Administrative Procedure Code and internal procedure rules, adopted by the Minister of Justice. Chapter Eights of the Administrative Procedure Code concerns a general right of all citizens to submit complaints (*сигнали*) to any relevant authority as a form of civil control over the state administration. Legal standing to submit complaints is granted to all citizens, civil organisations and the Ombudsman. Notably, the procedure is applied in cases, where rights or interests of the applicant are not directly concerned. Complaints could be filed in any form – in person, written, by phone, e-mail, etc. Persons making complaints do not have access to legal aid. Authorities competent to review complaints are those exercising direct supervision and control over the authorities and officials whose illegal and inappropriate actions or omissions are reported. Complaints must be submitted within two years of the commission of the violation. If the complaint is not submitted to the competent authority, the recipient is obligated to forward it within seven days. The decision is made within two months of receipt of the complaint and is

[45] ESDOA, Art. 62 (3)

[46] ECtHR, *Neshkov and others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, para.211.

communicated to the applicant within seven days of its issuance. The decision is not subject to appeal and has to be implemented within one month of its adoption. A complaint that has already been ruled upon is not subject to retrial. The penitentiary administration does not have an obligation to inform inmates on the availability of this complaint mechanism. Nevertheless, according to the statistics, the Inspectorate receives numerous complaints from prisoners.

The Inspectorate is independent form the Chief Director for the Execution of Sentences. However, there is no publicly known case in which the Inspectorate has revealed major dysfunction of the administration of the penitentiaries. The information, presented in the reports and the overall conclusions of the inspectors tend to be rather contradictory to the situation, described by external monitoring bodies, such as the CPT. According to prisoners interviewed, during visits, the inspecting body collects information from the prison administration only, without interviewing prisoners, even when inspections are initiated upon prisoners' complaints. The reports following inspections to the penitentiary institutions are not published online, but could be obtained by request in accordance with the.

1.2.2. Supervisory Boards

The supervisory boards are specialised structures, vested with the powers to exercise public control over the operation of the penitentiary facilities and the execution of the sentence "deprivation of liberty", as well as to assist the resocialization of prisoners. Their establishment, structure and functioning is governed by the ESDOA.[47] The supervisory boards are established with the municipal councils. The chairperson of the municipal council appoints the members of the board and directs its work. The composition of the boards might differ from one municipality to another with the expectance of the mandatory membership of a probation officer and a representative of a prison. Among other, members of the supervisory boards have the power to visit penitentiary institutions, interview prisoners, receive access to documents they need, request and receive information from the administration. The proposals and recommendations of the supervisory boards are mandatory for the director of the prison. Upon failure to act on a proposal or recommendation of a supervisory board, the matter shall be referred to the Chief Director for the Execution of Sentences. The boards are funded by the municipality budget.

Although the law suggests the establishment of a supervisory board within each municipality, their actual number is very small. By definition, the board is deprived of independence because of the mandatory participation of prison administration representatives in it.

1.2.3. Commission for Protection against Discrimination

The Commission for Protection against Discrimination (CPAD, the Commission) is an independent specialised state authority for prevention of discrimination, protection against discrimination and ensuring equal opportunities, established by virtue of Protection against Discrimination Act in 2004.[48] It is defined also as a quasi-judicial organisation. The work of the Commission is governed by Protection against Discrimination Act and the Rules of organisation and Operation of the CPAD.

The mandate of the Commission is to hear complaints by victims or communications by third parties, as well as to initiate lawsuits by its own motion. The Protection against Discrimination Act allows for litigation by means of class action in terms of proceedings initiated by trade unions and nongovernmental organisations registered in public interest on

[47] ESDOA, Art. 170-171.

[48] Protection against Discrimination Act (*Закон за защита от дискриминация*) (2004), Art. 40(1), available in Bulgarian at: http://lex.bg/laws/ldoc/2135472223.

their own behalf. The Commission then initiates an investigation which lasts a maximum of 60 days. It has quasi-investigatorial powers, which allows it to be much more proactive in gathering evidence, relieving the victim. During the investigation, all persons, state and local government bodies are obliged to provide information and documentation required by the Commission. The Commission has the right to examine witnesses. No fees are charged for complaints lodged. The Commission adopts legally binding decisions and is competent to impose financial sanctions, to apply measures of administrative coercion, to decree measures for prevention and termination of infringement and restoration of the initial situation. Victims who obtain a final decision, establishing discrimination by the Commission may subsequently go to court to claim compensation based on that. Decisions, delivered by the Commission are appealable before the Supreme Administrative Court. Alternatively, applicants may submit complaints against acts of discrimination before the regional courts.

This remedy is available to all citizens, including prisoners and pre-trial detainees. However, there are some aspects of the procedure before the Commission that limits prisoners' access to it and make the remedy rather ineffective. Among these aspects are the following:

- The Commission is a centralised body, which has its seat in Sofia, without local affiliations and without possibility to hear complaints outside Sofia.

- Applicants have no right to legal aid in the proceedings before the Commission. They could receive legal assistance from the legal staff of the Commission.

- The Commission could impose monetary penalties on the respondent but could not award monetary compensation to the victim. Such compensation has to be requested in separate proceedings under the SMRDA before the general courts.

- There is no mechanism for enforcement of Commission's decisions.

In relation to these factors, plus the fact that prisoners are not informed of the existence of the of this complaint mechanism by the prison administration, it is not often that they lodge complaints of discriminatory treatment to the Commission. The penitentiary statistics indicate that in 2013 there have been two and in 2014 - three newly initiated proceedings before the Commission.

In most cases prisoners claim discrimination on the ground of "personal status" which is interpreted to encompass "prisoner's status". Other complaints address unequal treatment of prisoners on the basis of citizenship. In 2006 the Commission heard four complaints from foreign prisoners who claimed direct discrimination stemming from the Execution of Sentences Act 1969 (repealed). According to the law in force at that time, foreign prisoners could serve their sentences in a single closed-type prison located in Sofia, without further possibility to be transferred to open-type prisons where a more relaxed regime was applied. Although in these cases the Commission did not establish discriminatory treatment, it issued a recommendation to the Minister of Justice to improve the situation of foreign prisoners with respect to their allocation.[49] (Decisions 9, 10, 11, 12/2006 of the CPAD).

In 2012 the Commission found that the building of the penitentiary hospital in Sofia does not comply with the standards for physical accessibility and thus found violation of the Action against Discrimination Act on the protected ground "disability" in relation to a prisoner, treated in the hospital.

[49] Commission for Protection against Discrimination, Decisions No. 9/2006, 10/2006, 11/2007, 12/2006.

2. Judicial Remedies

2.1. Prosecutor

According to Article 127 (5) Bulgarian Constitution, the prosecution office exercises control over the legality of the execution of sentences. More detailed regulation of the prosecutor's powers in the field of execution of sentences is adopted in Article 146 Judiciary Act 2007.

Inspections to prisons may be carried out either on the prosecutor's initiative or as a result of complaints from prisoners, their relatives or information published in the media. Prosecutors may confer with the inmates in confidence, examine their applications and complaints, and order the administration of the respective facility to keep them informed of relevant matters. Article 146(2) of the Judiciary Act provides that public prosecutors may order the release of any person who is being detained unlawfully, give mandatory instructions for the correction of irregularities, or stay the enforcement of any unlawful decisions and seek their quashing. The prison administration is under the obligation to report to the district prosecutor on various occasions, including for each case of use of force, auxiliary means and arms and for the imposition of preventive isolation. The district prosecutor is the competent authority to grant applications of prisoners for temporary suspension of the sentence, including on medical grounds.

Inmates can submit complaints and requests to the prosecution office. There are no specific regulations, governing the procedure. In practice, the rules on disposal of complaints and requests, postal expenses and receipt of replies, described in Section 1.1.1. "General Complaint Procedure in Prisons" apply here as well. According to inmates interviewed, it is very rare that during their visits to the penitentiaries, prosecutors meet in person with prisoners. Following its visit to Bulgaria CPT emphasises the importance of inspecting authorities not limiting their activities to seeing prisoners who have expressly requested to meet them, but rather taking the initiative by visiting detention areas and entering into contact with inmates.[50]

In the *Neshkov* judgment the Court clearly observed that complaints to the prosecutor are not effective remedies against prisoners' rights violations. The Court points at two major shortcomings of the complaint procedure: "the complaint to a public prosecutor is not based on a personal right for the person concerned to obtain redress, and there is no requirement for such a complaint to be examined with the participation of the inmate concerned or for the prosecutor to ensure his or her effective participation in the proceedings".

2.2. General Courts

As far as Bulgarian penitentiary legislation and traditional jurisprudence are concerned, judicial intervention in the execution of sentences must be limited to cases that significantly affect prisoners' rights and thus require greater procedural safeguards.[51] These cases are explicitly stated in the law. First, decisions on all forms of sentence implementation which adds new restrictions on the prisoner's legal status or security regime are made by the regional court, exercising jurisdiction over the respective prison.[52] Second, decisions on solitary confinement for preventive purposes[53] or as a disciplinary sanction,[54] as well as decisions for confiscation of prisoners' property made by the prison governor are appealable

[50] Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 April to 7 May 1999, CPT,/ Inf (2002)1

[51] Pavlov, Stefan, 1974, *Participation of the Court in the Execution of Sentences*, Sofia, pp. 47.

[52] Criminal Procedure Code, Art. 443-446.

[53] ESDOA, Act, Art. 120.

[54] ESDOA, Art. 111.

before the district court, exercising jurisdiction over the respective prison. Further, governor's decisions on deductions from prisoners' monthly remuneration for damages are subject to appeal before the district court.[55] Finally, the regional court is competent to decide on applications for early conditional release[56] and replacement of life imprisonment punishment with a deprivation of liberty for a definite term[57].

As we could see, general courts, whether district or regional, are competent to hear various disputes, concerning prisoners' rights. However, they have legislatively determined jurisdiction, which does not cover complaints against inhuman and degrading treatment of prisoners related to overcrowding, poor material conditions, lack of sanitary facilities, access to healthcare.

2.3. Administrative Courts

The evolution of administrative law in Bulgaria during the last decade brought certain developments in the field of penitentiary law as well. Essentially, new avenues for judicial protection against unlawful acts, decisions and omissions by administrative authorities were introduced in 2006 with the adoption of the Administrative Procedure Code. Prisoners have used these avenues – the preventive and the mandatory injunctions against administrative acts, to challenge some aspects of conditions of detention, including health care quality and accessibility. Below, a short description of these proceedings and analysis of their effectiveness in prisoner's rights protection are provided.

Prohibitive injunctions against the administrative authorities

Article 250 of the Administrative Procedure Code provides that any person who has the requisite legal interest may request the termination of actions carried out by an administrative authority or a public official that have no basis in the law or in an administrative decision. The remedy is of a general nature, available to all persons, including persons deprived of their liberty. The request has to be dealt with immediately by a single judge, who may order an inquiry to be conducted by the police or another authority to establish whether the actions are still performed, on whose behalf and on what grounds. The decision of the court is subject to appeal, which does not have suspense effect.

Mandatory injunctions against the administrative authorities

Articles 256 and 257 of the Administrative Procedure Code provide that a person may bring proceedings to enjoin an administrative authority to carry out an act that it has the duty to carry out under a legal provision. A request under Article 256 has to be filed within 14 days of the submission of a request to the administrative body to perform the said action. The inaction of an administrative authority on an obligation arising directly from a statutory instrument is appealable indefinitely, applying, mutatis mutandis, the provisions on contestation of individual administrative acts. If the court allows the claim, it enjoins the authority to carry out the action and fixes a time-limit.

Procedural rules, applicable to both the prohibitive and mandatory injunctions

The request is to be made to the administrative court, exercising jurisdiction over the territory where the alleged actions are said to be carried out. The petitioner is charged a fixed court fee of 10 levs (5 euro). He/ she might also request the court to be except from the fee due to lack of financial means. Access to state-funded legal aid is available under the general

[55] ESDOA, Art. 123 (2), (3).
[56] Criminal Procedure Code, Art. 437-442.
[57] [57] Criminal Procedure Code, 449-450.

regulations of the Legal Aid Act.[58] The presence of the petitioner at the court proceedings is not obligatory.

In the light of the national case law, the overall assessment made by the Court in *Neshkov* and in *Harakchiev and Tolumov* cases was that the injunction proceedings could not be considered as effective preventive remedies for overcrowding and poor material conditions in prisons. According to the Court, these judicial avenues for redress "could be moulded to accommodate grievances relating to conditions of detention if all unclear points, such as the courts' approach to such claims, the proper defendants, the duration of the injunctions against the authorities and the exact way in which they are to be enforced, even where overcrowding is concerned, were properly elucidated".[59]

B. Compensatory Remedy

The possibility for bringing claims for damages under SMRDA constitute the single compensatory remedy available to victims of inhuman and degrading treatment suffered as a result of conditions of detention in bulgaria. Although the SMRDA is in force since 1989, it was only in 2003 that the courts started awarding damages as result of conditions of detention in penitentiary facilities. At present, the claim for damages is a general compensatory mechanism, available to all persons, including persons detained in prisons and IDFs.

Article 1 of the SMRDA provides that the state is liable for damages suffered by individuals or legal persons as a result of unlawful decisions, acts or omissions by civil servants, committed in the course of or in connection with administrative action. The authority, competent to hear claims against such unlawful administrative decisions, acts or omission of administrative officials is the administrative court, in a single-judge panel. If the claim relates to unlawful act or omission, its unlawfulness has to be established by the court hearing the claim for damages. The administrative courts are not involved in the implementation of sentences, thus, in principle, claims for damages brought by prisoners as a result of conditions of incarceration should not be able affect negatively prisoners' access to parole and other possibilities for relaxation of the regime.

A flat-rate court fee is due for filing a claim under the SMRDA, which is BGN 10 for physical persons (EUR 5.12). By motion of the court, the fee might be waived if the claimant manages to prove he/ she lacks financial means. The claimants pay all costs incurred in the proceedings only if the claim has been rejected in its entirety or if they withdraw or waive their claim entirely.[60] If the court decides in favour of the claim, in whole or in part, the defendant is ordered to pay the costs relating to such proceedings, as well as the claimant's state fee.[61] Again, by motion of the court, a claimant who is in position to prove lack of financial means might be granted legal aid. The Bulgarian Bar though is not organised in a way to provide specialised legal aid in prisoners' right cases.

The claim for damages has to indicate the exact defendant. In the case of damages incurred as a result of detention in prisons or IDFs, it is the Chief Directorate for the Execution of Sentences. However, it is often that prisoners, due to lack of legal knowledge and legal assistance, make their claims against the Ministry of Justice instead. Claims, stating incorrect defendant are dismissed by the courts.

[58] Legal Aid Act (*Закон за правната помощ)* (2006), Art. 22(1)(1), available in English at: http://www.lex.bg/laws/ldoc/2135511185.

[59] ECtHR, *Neshkov and others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, para.284.

[60] SMRDA, Art. 10 (2).

[61] SMRDA, Art. 10 (3).

In a serious of decisions, the ECtHR has accepted that a claim under Article 1 of SMRDA could in principle be regarded as an effective domestic remedy in respect to complaints under Article 3 of the convention relating to conditions of detention. However, in view of it purely compensatory nature, the claim was regarded as effective only if the alleged violation had come to an end because the person concerned has been released or placed in Article 3-compliant conditions. In other case, the court found that the remedy failed to operate properly because of the administrative courts' formalistic approach to various points. Nevertheless, in the *Neshkov* pilot judgment, the Court has clearly established that the claim for damages under SMRDA is not an effective compensatory remedy as required by Article 13 of the Convention in terms of violations of Article 3 related to conditions of incarceration. The arguments of the Court include the following major points:

- Only 30 % of the cases under Article 1 (1) of SMRDA, brought by prisoners have resulted in an award of compensation;
- The administrative courts take into account only the concrete statutory or regulatory provisions, governing conditions of detention, but not the general rule prohibiting inhuman and degrading treatment. Moreover, there are only few provisions in the national legislation, governing the exact practical aspects of detention, thus the courts easily find no illegality regarding the conditions of detention. Thus, the courts focus more on the examination of the lawfulness of the actions, within the meaning of the national law, than on the prisoners' right to be free from inhuman and degrading treatment.
- In some cases the courts require the prisoners to split up their claims for damages to reflect individually each issue that affect them and proceed to examine the claims separately, without adopting a cumulative approach to the conditions of detention.
- Bulgarian courts do not recognise that poor material conditions of detention must be presumed to cause non-pecuniary damages to the persons concerned.[62]

Since *Neshkov and others v. Bulgaria* pilot judgment, the national case law on compensation for inhuman and degrading treatment in prisons has demonstrated some positive developments. These developments include several cases in which the national courts make direct references to the Convention and to the pilot judgment, as well as to the other sources of international standards and reports of monitoring bodies, cited by the ECtHR in the judgment.[63] Further, a slight increase in the amount of the compensations awarded to prisoners is observed. The timely translation into Bulgarian and the publication on the webpage of the Ministry of Justice of the pilot judgment and the CPT's last report on the situation in the Bulgarian penitentiary facilities have contributed to these developments. Another relevant factor was the realization of a series of training seminars for professionals, including judges by Bulgarian Helsinki Committee in four cities in Bulgaria, where some of the most problematic prisons are located. The seminars dealt with the jurisprudence of ECtHR

[62] ECtHR, *Neshkov and others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, para.202-204.

[63] Burgas Administrative Court, Decision No. 1686 from 12 November 2015, regarding Administrative Case No. 419/2015; Burgas Administrative court, Decision No.1218 from 2 July 2015, regarding Administrative Case No.650/2015; Burgas Administrative Court, Decision No.1467 from 14 October 2015, regarding Administrative Case No. 428/ 2015; Burgas Administrative Court, Decision No.1875 from 10 December 2015, regarding Administrative Case No. 1620/ 2015; Varna Administrative Court, Decision No. 2764 from 23 December 2015, regarding Administrative Case No. 1927/2015; Varna Administrative Court, Decision No. 1746 from 19 November 2015, regarding Administrative Case No. 717/2015.

and CPT on prisoners' rights in Bulgaria. During each event, a hard copy of the translated into Bulgarian versions of the pilot judgment and the CPT report were distributed to the participants.

However, is has to be highlighted that these positive trends concern almost exclusively the practice of the two administrative courts, under which jurisdiction fall Varna and Burgas prisons. This clarification is important since four of the five applicants in the *Neshkov* judgment have been detained in these prisons. The CPT reports and the public statement have been also focusing on the situation of overcrowding, extremely poor material conditions, etc. in Varna and Burgas prison. Thus, it is still unclear whether the positive developments form part of a stable trend, common to the practice of the whole judiciary, or is rather a short-term limited reaction of some administrative courts, directly affected by the international criticism on the penitentiary system.

III. Soft law and National Human Rights and Non-Jurisdictional Structures and Authorities

1. National Preventive Mechanism

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) has entered into force in respect to Bulgaria on 1 July 2011. The National Assembly has adopted amendments to the Law on the Ombudsman[64] related to the designation of the Ombudsman as a national preventive mechanism (NPM) which have entered into force on 11 May 2012. Thus, a new Directorate of National Preventive Mechanism and Fundamental Right and Freedoms has been established at the Office of the Ombudsman.

NPM conducts both announced and unannounced visits to various places and institutions, including prison and prison dormitories. The Bulgarian model of NMP does not envisage mandatory cooperation with civil society organisations in the process of implementing of its mandate. During visits, the NMP team is authorised to:

- to conduct conversations with prisoners in private either personally or through an interpreter if necessary,
- to access all information relevant to the treatment of the persons detained and the conditions at the detention places;
- to require information from the staff of the detention place being visited and talk to them, as well as to personally talk to any other persons within the site being inspected;
- to arrange medical examinations of the persons, subject to their consent.

After each visit, the experts draft a report which contains recommendations and suggestions aimed at improving the conditions of detention and treatment of persons deprived of liberty, and at preventing torture and other cruel, inhuman or degrading treatment or punishment. The reports are submitted to the relevant competent authorities, which are under the obligation to inform the Ombudsman within one month thereafter of the actions undertaken to implement the recommendations.

The Ombudsman may recommend to the Minister of Justice to close, reconstruct or expand a prison or a prison dormitories if the level of overcrowding or the poor hygiene or material

[64] Law on the Ombudsman (*Закон за омбудсмана*) (2004), Art. 28a-28e, available in Bulgarian at: http://lex.bg/laws/ldoc/2135467520

conditions prevent prisoner rehabilitation or are liable to put the inmates' physical or mental health at risk.[65] The Minister must put the recommendation on the Council of Ministers' agenda within one month, and the Council of Ministers must announce the measures taken to resolve the problem.[66] There are no such recommendations made so far.

The Ombudsman receives complaints from inmates through mail and during visits to the penitentiaries. There are no precise rules that guarantee prisoners' access to the complaint procedure. Also, the Ombudsman has no power to render legally binding decisions. Taking this into consideration, in *Neshkov* case the EChHR concluded that in the light of Article 13 of the Convention, the Ombudsman is not an effective remedy to prisoners. The CPT has also recommended that the presently existing NPM should be reinforced so as to enable it to visit each penitentiary establishment in Bulgaria on a frequent ban.

Complaints, received by the NPM, relate to the following issues: prison material conditions, overcrowding, access to employment, lack of purposeful activities, expensive goods in the prison shops and expensive telephone calls; poor and insufficient medical services, lack of meals for inmates with special dietary needs. Many raise complaints over the application procedures for transfer to another prison, early release, reduction of the sentence as a result of work done, change of security regime by a lighter one. Another group of complaints refers to the use of force and restraint against inmates. Such complaints are thoroughly investigated by the administration of the NPM and reports are sent to the relevant authorities, including the prosecution office.

IV. Other Sources

Over the past two decades, the Bulgarian prisoners' rights protection system has been a matter of profound concern to a number of international and national actors. The CPT, the United Nations Committee against Torture and the Bulgarian Helsinki Committee are among the organisations that most methodically and closely monitor prisons in Bulgaria, document prisoners' right violations, make recommendations to the national authorities or undertake other steps to improve the situation. The following is an overview of the work and key findings of these and other relevant for the reform of the penitentiary system actors.

1. CPT

Since 1995, the CPT has carried out ten visits to Bulgaria – six periodic (in 1995, 1999, 2002, 2006, 2010, 2014) and four ad hoc (in 2003, 2008, 2012, 2015). The reports on these visits and the responses of the Bulgarian authorities are available on the Committee's website.[67]

Pursuant to Article 10 (2) of the European Convention on the Prevention of Torture or Inhuman and Degrading Treatment or Punishment on 26 March 2015 the CPT made a public statement concerning Bulgaria.[68]

The public statement was a result of the persistent lack of responsiveness of the Bulgarian authorities to the repeated recommendations made by CPT throughout the years for the improvement of treatment and conditions in police and penitentiary establishments. In the statement, the Committee underlines that most of their recommendations remain unimplemented or partially implemented, some of them dating back to the first periodic visit to Bulgaria in 1995. It further explains that the government's responses to their findings and concerns have been brief, containing very little new information and failing to address the

[65] ESDOA, Art. 46 (1).
[66] Ibid, Art. 46(2).
[67] http://www.cpt.coe.int/en/states/bgr.htm.
[68] *Public Statement Concerning Bulgaria*, CPT/Inf (2015) 17.

majority of the Committee's recommendations, usually merely quoting the existing legislation and/or explaining the lack of action by referring to budgetary constraints. Information, concerning allegations of ill-treatment and inter-prisoner violence have been dismissed.[69] With regard to the Ministry of Justice detention facilities, the CPT expresses serious concern over the lack of improvement and continuing shortcomings in the following areas: deliberate physical ill-treatment of inmates, including juveniles, by staff; inter-prisoner violence, prison overcrowding, poor material conditions in a number of prison facilities, inadequate prison health-care services and low custodial staffing levels, corruption, lack of out-of-cell activities, as well as concerns related to discipline, segregation and contact with the outside world. The CPT concludes that in order for the Bulgarian government to improve the situation of persons placed in custody, the entire approach to the issue of deprivation of liberty should radically change. This approach should integrate not only improvement of material conditions, but also amendments in the legislation and concrete and effective measures to their implementation.

Other pressing issues identified and addressed by the CPT in their earlier reports on the situation in prisons and IDFs in Bulgaria that have not yet been resolved include, but are not limited to: existence of a single correctional home for juveniles, poor nutrition, lack of outdoor activities for detainees in IDFs, segregation of life-sentenced prisoners, lack of confidentiality of medical files, lack of care for prisoners with drug-related problems, insufficient frequency and duration of visits, closed visiting arrangements, high prices of telephone calls, disciplinary isolation of juveniles, 24-hour shift pattern of the custodial staff.

The operation and effectiveness of the complaint procedures in prisons has been another issue of the permanent examination in the course of CPT's visits to Bulgaria. During its 1999 visit, the CPT delegation has been informed that a new system of complaints boxes has been introduced to provide prisoners with confidential access to senior officials at the Ministry of Justice. These boxes, located in each prison establishment, were only to be opened by a representative of that Ministry. However, during the visit of the CPT delegation to Burgas prison, the delegation was told that in practice all complaints boxes, including those set aside for complaints to the Ministry of Justice, have been opened by the prison management. The CPT commented that in fact it was hard to see how an efficient system might be devised whereby a representative of the Ministry could regularly travel from Sofia to open the boxes in all prisons throughout the country. The CPT further noted that the complaints boxes have been located in full view of the staff office on the central landing, making it impossible for a prisoner to put a complaint into the box without being observed by a member of staff. Lastly, the delegation has heart a number of allegations that prisoners' complaints had been the subject of significant delays before being answered or had even not received a reply.

Over the years, many prisoners interviewed by the CPT's delegations express scepticism about the operation of the complaints procedure, especially concerning the confidentiality of the complaints sent to outside bodies. They have claimed that staff responsible for collecting prisoners' correspondence withheld complaints or threatened inmates with reprisals in order to prevent them from complaining to an outside authority. More specifically, some prisoners have testified that they would not make use of the possibility to complain because they fear retaliation from staff. Indeed, prisoners placed at different establishments have pointed out that complaints lodged at internal level frequently had resulted in some form of punishment of the prisoner concerned. The CPT delegations has received also allegations that complaints sent to competent outside bodies were not responded to.

[69] *Public Statement Concerning Bulgaria*, CPT/Inf (2015) 17, para. 4.

2. UN Committee against Torture

UN Committee against Torture (CAT) has analysed the situation of closed institutions in Bulgaria as commentary to Bulgaria's periodic reports to the Committee. The last UN CAT commentary is published in 2011, while the previous commentaries are dated 2004 and 1999. In its Concluding Observations on the 2004 examination of Bulgarian third periodic report under UN CAT, the UN Committee expressed serious concerns over the fact that due to lack of an independent investigative system to investigate complaints in places of detention, allegations of ill-treatment are not always investigated properly and impartially, resulting in an apparent impunity of those responsible.[70] Therefore, the Committee recommended the establishment of an effective, reliable and independent complaint system that allows for the prompt and impartial investigation into allegations of ill-treatment and torture.

Inter-prisoner violence was also a matter of great concern to the Committee. In the Concluding Observations of 2004, it was recommended that the Bulgarian government take measures to ensure close monitoring of inter-prisoners and other violence, including sexual violence, in detention facilities with a view to preventing it. In its Concluding Observations on the 2011 examination of Bulgarian fourth and fifth periodic reports, the Committee expressed its concerns over reports of increased inter-prisoner violence, including sexual violence.

In its 2011 consideration of Bulgaria's fourth and fifth periodic reports, on the issue of independent monitoring of places of detention and other places where people are deprived of liberty in Bulgaria, the UN CAT welcomes Bulgaria's ratification of the Optional Protocol to the Convention against Torture. The Committee, however, expresses concern that independent monitoring by civil society organisations is not allowed in all cases of detention and that non-governmental organisations such as the Bulgarian Helsinki Committee require a prosecutor's permission for access to pretrial detainees. It thus recommends that the state ensure independent, effective and regular monitoring of all places of detention by independent non-governmental bodies.[71]

3. Bulgarian Helsinki Committee

The Bulgarian Helsinki Committee (BHC) is a non-governmental human rights organisation, established in 1992. It actively works for the protection of prisoners against torture, inhuman and degrading treatment in Bulgaria through field monitoring, national and international litigation, advocacy and other activities. The organisation's monitoring activities are based on an agreement between the Ministry of Justice and the BHC on the basis of Article 4 of the ESDOA. In line with the agreement BHC researchers are issued permits in the beginning of every year with which they can enter every prison in Bulgaria. They can visit, with no escort from guards, prison cells, medical facilities, isolation wings, kitchens, schools and other premises where prisoners are held, receive documents and interview convicted prisoners in private. They can interview remand prisoners only with the permission of the respective prosecutor.

Annually, the BHC publishes information about prison conditions in a special chapter of its reports on the situation of human rights in Bulgaria.[72] Throughout the years, BHC has also produced a number of other publications, documenting and analysing the situation in prisons and investigative detention facilities and special reports, focusing on disciplinary practice in

[70] *Consideration of reports submitted by States parties under Art. 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* CAT/C/CR/32/6 (2004) §5(c).
[71] Ibid, § 11.
[72] BHC's annual reports are available in English at: http://www.bghelsinki.org/en/publications/bhc-reports/annual-human-rights-reports/.

prisons, imprisonment without commutation, children deprived of liberty, women in prison, etc.

Over the course of its work, the BHC has documented and addressed numerous serious violations of prisoners' human rights, including widespread inter-prisoner physical and sexual violence, physical abuse by guards, arbitrary disciplinary punishments, excessive use of strip searches of women prisoners, lack of adequate care provided to prisoners, suffering from mental and personal disorders, indiscriminate monitoring of telephone calls.

In addition, the BHC has litigated a number of landmark strategic cases, concerning rights of prisoners, including cases regarding material conditions in prisons, healthcare, incident of violence, discrimination and others, both before national courts and the ECtHR. Among others, BHC's lawyers have represented the applicant in *Dimcho Dimov v. Bulgaria*[73] and one of the applicants in *Neshkov and others v. Bulgaria*[74]. Another strategic case initiated by the BHC and currently pending before the ECtHR, concerns voting rights of prisoners in Bulgaria.[75]

4. Bulgarian Prisoners' Rehabilitation Association

Bulgarian Prisoners' Rehabilitation Association (BPRA) was officially registered in 2012. Members of the governing bodies of the Association are prisoners and ex-prisoners only. This fact renders the Association unique to the Bulgarian context. The association is supported by an attorney-at-law who provides legal assistance to prisoners.

In 2015 the BPRA communicated its position on the most pressing reforms in the penitentiary system to the Minister of Justice. Their list of recommendations and requests included the following: guards responsible for torturing and assaulting prisoners should be dismissed; the 12-hours shifts, carried out by security staff should be banned; the visit time should be increased by two hours weekly; prisoners should be able to send mail to state agencies free of charge; upon fulfilment of the formal legal requirements, each prisoners should be automatically proposed for early release to the courts; prisoners should have the right to receive packages, etc.

In 2015, again, the Association organised a petition among Bulgarian prisons, in which more than 200 prisoners expressed their desire a representative of the Association to be included as a member in a working group at the Ministry of Justice, working on the implementation of the *Neshkov and others v. Bulgaria* pilot judgment. As a result, their request was satisfied.

5. Prosecution Office

In 2015 the prosecution office released an analysis of the work of the prison security staff, which covered five prisons and seven prison dormitories.[76] The analysis indicated that the level of the security staff in prisons is far beyond the minimum standards to guarantee public security and safety inside prisons. According to it, the ration of prisoners to guards per shift in the five prisons inspected was as follows: Varna prison – 389:20; Burgas prison – 524:18(daytimes)/13(nighttimes); Pleven prison – 304:21; Belene prison -498:21:1; Bobov dol prison – 430:15. As a conclusion, prosecution office called upon the Ministry to fill in the vacant positions in all prisons.

[73] *Dimcho Dimov v. Bulgaria*, no. 57123/08, judgment of 16 December 2014.
[74] ECtHR, *Neshkov and others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, pilot judgment of 27 January 2015.
[75] ECtHR, *Kilinski and Sabev v. Bulgaria*, no. 63849/2009, communicated on 4 June 2015.
[76] Office of the Chief Prosecutor, *Letter No. 6207 from 27 July 2015 to the Minister of Justice*.

V. Reforms in the Prisoners' Rights Protection System Following ECtHR Pilot Judgment and CPT Public Statement against Bulgaria

The simultaneous adoption of a pilot judgment and a public statement against Bulgaria, both covering issues of inhuman and degrading treatment of prisoners, significantly accelerated the external pressure on the penitentiary system. The leadership of the Ministry of Justice responded by recognising the gravity of the problems and by declaring political will to cope with them. Indeed, in 2015 reforms were initiated in several directions. First, the governors of the three penitentiary institutions that had received the harshest criticism by the CPT in their latest report and in the public statement – the prisons in Sofia and Burgas and the reformatory for juveniles in Boytchinovtsi, were replaced. Nevertheless, two of the ex-governors not only remained in the prison system, but were also appointed to other important administrative positions. Second, to improve material conditions in prisons, the government resumed the construction of a new prison dormitory in Burgas; renovated and rehabilitated several other prison facilities, including the prison dormitory in Razdelna, prison kitchens and medical centres; initiated major construction projects to install in-cell toilets, etc. It has to be emphasised, however, that all significant renovation and construction works were carried out thanks to the funding of an external donor – the Norwegian financial mechanism, not by the state budget. Third, a new mechanism for reporting of violence and physical abuse in prisons and IDFs was introduced.[77]

At the end of 2015, the Ministry of Justice released a package of draft legislative amendments concerning reforms in the penitentiary system – primarily measures against overcrowding in prisons. New legal regulations of initial allocation of prisoners, transfer of prisoners, early conditional release and electronic monitoring of offenders were among the most significant measures proposed. Two expert working groups established at the Ministry of Justice elaborated part of the above-mentioned measures. Members of the groups were representatives of the Ministry of Justice, the prison administration, the NGO sector, the National Preventive Mechanism, judges, prosecutors. The Ministry, however, dropped some crucial amendments, proposed by the working groups, aimed to implement recommendations of the CPT and CAT in areas, other than those related to overcrowding.

Further, in response to the *Neshkov* pilot judgment, the Ministry has proposed the introduction of new special compensatory and preventive remedies in respect to conditions of detention. They have been elaborated by a working group, formed by several supreme judges and a former Bulgarian judge with the ECtHR. With regard to the compensatory remedy, the working group has explored different options for implementing the judgment, including the introduction of a general remedy, intended to redress violations of all Convention rights and freedoms on a national level. However, the Ministry of Justice opted for the introduction of a special remedy. This special remedy should provide monetary compensation for damages suffered as a result of inhuman and degrading treatment of prisoners and detainees in IDFs. According to the proposed legislative amendments, the remedy should be introduced by adding a new section to the SMRDA and a new set of procedural rules, including: shifted burden of proof; a requirement for the court to adopt a cumulative approach with respect to assessing the conditions and the other aspects of detention; a possibility for the court to call

[77] More details and description of the other measures implemented by the Bulgarian government in the course of the penitentiary reforms in 2015 could be found in: Secretariat General of the Committee of Ministers of the Council of Europe, *Communication form Bulgaria concerning the case of Neshkov and others and the Kehayov group of cases against Bulgaria (Applications No. 36925/10, 41035/98), DH-DD(2015) 755 rev*, 01 September 2015; *Response of the Bulgarian Government to the report of the European Committee for the prevention against torture, inhuman or degrading treatment or punishment (CPT)on its visit to Bulgaria from 13 to 20 February 2015*, CPT/Inf (2015) 37.

for a hearing public officials or other individuals, whose statements might help for the proper adjudication of the case.

With regard to the preventive remedy, the Ministry of Justice proposed the introduction of a new special complaint procedure before the administrative court. According to the proposed legislative amendments, the remedy should be introduced by adding a new chapter in the ESDOA, under the name "Protection of torture, cruel, inhuman or degrading treatment in the course of execution of the sentence "deprivation of liberty" or the measure "detention on remand"". The new procedure should allow prisoners to complain before the administrative court about the conditions of their detention that violates the prohibition of torture, cruel, inhuman or degrading treatment, stipulated in Article 3 of ESDOA, including in cases of overcrowding. The administrative court should have the power to effectively improve the situation of those complaining, including through ordering their transfer to another cell or detention facility. In cases of transfer the opinion of the prisoners concerned should be also taken into consideration. The court should hear the case within seven days following the submission of the complaint. The decision of the administrative court should be appealable before another panel of the same court. The court's decisions are binding on the prison administration.

Notwithstanding its recent efforts to improve the situation in prisons, the Ministry of Justice could be criticised for failing to devise a comprehensive strategy to reduce overcrowding in prisons. The reform initiated was based predominantly on the so called "back-door" policy for reducing prison population through releasing prisoners earlier than the full term of their sentences but was short of "front door" measures against overcrowding that should limit the input of offenders in prisons at the first place. The other two striking problems that remained unresolved were the limited access and the poor quality of health care services provided to prisoners. Meanwhile, in November 2015 the Minister of Justice and its team, which acted as the main drivers of the penitentiary reforms, initiated following the pilot judgment and the public statement against Bulgaria, resigned, thereby deeming the future of the reforms unclear.