

BULGARIA

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1. Executive summary

Definitions

- [1]. Bulgarian legislation does not use a single definition of intellectual disability and mental disorder. 'Mental retardation' and 'mental disorder' are the predominant terms. Only medical professionals are obliged to use the definitions provided by the International Classification of Diseases – tenth revision. Other professionals lack understanding of the potential and the limitations posed by these conditions.

Anti-discrimination

- [2]. The Constitution does not ban discrimination based on disability but the *Закон за защита от дискриминация* [Protection Against Discrimination Act (PADA)] provides for such a ban and also introduces positive discrimination to equalise opportunities for disabled groups. Few provisions in national legislation are directly addressed at people with mental disorders or intellectual disabilities. However, a number of legislative acts provide for protective measures in terms of housing, transportation, access to information, education, and employment of persons with disabilities, including those with mental disorders and intellectual disabilities. Still, these measures seem to be either inadequate or insufficient or implemented by the relevant authorities in a way that prevents the real and effective inclusion of persons with disabilities in Bulgarian society.

Specific fundamental rights

- [3]. The Bulgarian Constitution provides for all fundamental rights and for the equality of everyone before the law. However, research revealed much evidence that the implementation of some rights is denied to people with mental disorders and intellectual disabilities. Such rights include the right to vote and be elected, the right to marry and have children, the right to freedom from degrading and inhuman treatment, the right to fair trial, the rights to liberty and security, and the right to property.

Involuntary placement and involuntary treatment

- [4]. Bulgarian legislation provides for numerous safeguards regarding involuntary placement and involuntary treatment. The *Закон за здравето* [Health Act] (01.01.2005) provides for the obligation to obtain an expert medical statement about the mental condition of a person whose detention is requested and about the potential danger ensuing from that state; from its very beginning the procedure is carried out before a court and entitles the detainee to appeal the placement order, as well as to have a court-appointed legal representative; it sets time limits for a medical examination report to be issued and court hearings to be scheduled; it also shortens the term of compulsory treatment to three months. However, in practice patients are not aware of their rights, are treated with medication that they or their guardians did not consent to and are denied access to a fair trial under the threat that their status would worsen if they appeal the court's decision..

Competence, capacity and guardianship

- [5]. Bulgarian legislation regarding guardianship is not in compliance with international standards. It does not provide for any alternatives for protection of the person and his/her property, security, liberty, etc. other than guardianship; it does not provide for any safeguards for a person incapacitated during legal and administrative proceedings; people under guardianship are deprived of all their rights immediately and without a regular review of their status or any review of the actions of guardians towards them. Again, numerous examples of abuse of people under guardianship by their guardians and State and municipal authorities were found by research. Several cases to challenge this were initiated recently by an NGO before the European Court of Human Rights in Strasbourg, and it is hoped that their outcome will bring about a change in legislation and practice in Bulgaria.

Miscellaneous

- [6]. Our research did not identify any miscellaneous issues.

2. Definitions

- [7]. Bulgarian legislation uses different definitions for ‘intellectual disability’ and ‘mental disorder’ depending when it was drafted and the terms used by medical science at that time. The *Закон за лицата и семейството* [Individuals and Family Act] (1949)¹ which introduced these conditions for the first time into legislation uses ‘feeble-mindedness’ to describe intellectual disability and ‘mental disease’ to describe mental disorder without providing any further details. The *Наредба № 1 от 23.01.2009 г. за обучението на деца и ученици със специални образователни потребности и/или с хронични заболявания* [Regulation № 1 for the Education of Children and Pupils with Special Educational Needs and/or Chronic Diseases (23.01.2009)]², adopted by the Minister of Education uses ‘mental retardation’ (умствена изостаналост) for intellectual disability and divides this into four levels – mild, moderate, severe and profound (лека, умерена, тежка и дълбока).³ It again does not provide any definitions. The *Закон за здравето* [Health Act] (01.01.2005) does not provide any definitions but uses the terms ‘persons with mental disorders’ (лица с психични разстройства), ‘persons with moderate, severe and profound mental retardation’, and ‘persons with vascular or senile dementia’ (лица със съдова и сенилна деменция) when describing people with mental disorders who need special healthcare (Art. 146). However all medical legislation and statistics use definitions that correspond to the World Health Organization’s International Classification of Diseases and Related Health Problems, Ninth Revision, (ICD-9), although the tenth edition of this reference guide is generally accepted as the international standard (ICD-10). The latter was officially introduced for medical professional and all other statistical, municipal, and civil authorities dealing with diagnosis on 01.01.2005.⁴

¹ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (1949), Art.5.

² Bulgaria/*Наредба № 1 от 23.01.2009 г. за обучението на деца и ученици със специални образователни потребности и/или с хронични заболявания* [Regulation № 1 for the Education of Children and Pupils with Special Educational Needs and/or Chronic Diseases] (23.01.2009),

³ Until mid-2002, Art. 2 of *Instruction No. 6 on the placement of children and pupils with physical or mental disabilities in special schools and special educational-disciplinary establishments, (18 March 1977) by the Ministry of Education and Ministry of Health Care* defined a child with ‘mental insufficiency’ as a child whose ‘cognitive activity is permanently impaired because of organic damage to the brain’. On 19.08.2002, the Ministry of Education issued *Decree No. 6 for the education of children with special educational needs and/or chronic illnesses* that replaced the earlier instruction. The decree does not contain a definition of intellectual disability or mental disorder. On 23.01.2009 this decree was replaced with a new one again not defining intellectual disability and mental disorder. However, it generally relies upon the definitions corresponding to the ICD Tenth Revision (ICD-10) according to which, ‘mental retardation’ is defined as a ‘complex disturbance in the cognitive, speech, motor and social skills, which leads to deviations in adaptive behaviour’. This definition sets out four levels of intellectual disability: mild, moderate, severe and profound. The Regulations for the Implementation of the Law on Public Education uses the term ‘mental retardation’; Legislation issued by the Ministry of Labour and Social Policy generally uses the term ‘persons with mental retardation/disability’, see Decree 4 of 16 March 1999 for providing social services, Art. 38(1).

⁴ Bulgaria/*Наредба № 42 от 8.12.2004 г. за въвеждане на международната статистическа класификация на болестите и проблемите, свързани със здравето – десета ревизия* [Ordinance 42 of 8.12.2004 for the introduction of the International classification of diseases and related health problems – tenth revision, issued by the Ministry of Health] (01.01.2005), Art.1 and Art. 2.

3. Anti-discrimination

3.1. Incorporation of United Nations standards

- [8]. Bulgaria signed the UN Convention on the Rights of Persons with Disabilities (CRPD) on 27.09.2007 and the Optional Protocol to the Convention on the Rights of Persons with Disabilities on 18.12.2008. On 24.04.2007 the *Комисия за защита от дискриминация* [Protection Against Discrimination Commission (PADC)] issued a recommendation to the Bulgarian Cabinet of Ministers to begin preparation for ratification of the UN Convention on the Rights of People with Disabilities and its Optional Protocol.⁵ We did not find any evidence that the Government is currently preparing to ratify this convention.

3.2. The anti-discrimination national framework

Anti-discrimination/equality rules

- [9]. Bulgarian anti-discrimination/equality rules regarding persons with mental disorders and/or intellectual disabilities are the same rules applicable to all other disability groups as Bulgarian legislation does not distinguish between them in terms of ensuring protection from discrimination or providing preferential treatment. The *Конституция на Република България* [Constitution of the Republic of Bulgaria] bans discrimination on other grounds⁶ but disability is not protected. The *Закон за защита от дискриминация* [Protection Against Discrimination Act (PADA)]⁷, the special integrated anti-discrimination law, bans discrimination on grounds of disability. Disability is defined under the *Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act (IPDA)]⁸ as ‘any loss or impairment of the anatomical structure, physiology, or psychology of an individual.’⁹ The existence of an impairment itself is sufficient for a person to be considered disabled, regardless of its impact on the individual’s professional life. The Integration of Persons with Disabilities Act¹⁰ further defines permanent disability as ‘anatomical, physiological, or psychological impairment resulting in a permanent reduction of an individual’s abilities to perform activities in the manner and to the extent possible for a healthy individual, where the medical authorities have certified a reduction in working ability or the type and the degree of the disability of a degree of 50 per cent or more.’¹¹ This definition of permanent disability is narrower than the ECJ concept of disability as it requires three additional elements – permanence of what is effectively the equivalent of a

⁵ Bulgaria/Годишен доклад на Комисия за защита от дискриминация за 2007 г. [2007 Annual report of the Protection Against Discrimination Commission], p.112, available in English at: <http://www.kzd-nondiscrimination.com/images/stories/pdf/annual%20report%202007.pdf> (last accessed on 06.11.2009).

⁶ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 6. para.2, available in English at: <http://www.parliament.bg/?page=const&lng=en> (last accessed 06.11.2009). The grounds are: race, national origin, ethnicity, sex, origin, religion, education, conviction, political affiliation, personal or public status, and property status.

⁷ Bulgaria/Закон за защита от дискриминация [Protection Against Discrimination Act (PADA)] (01.01.2004), available in English at: http://www.kzd-nondiscrimination.com/index.php?option=com_content&task=view&id=15&Itemid=30, (last accessed on 06.11.2009).

⁸ Bulgaria/Закон за интеграция на хората с увреждания [Integration of Persons with Disabilities Act] (01.01.2005) § 1.1 Additional Provision, available at <http://lex.bg/bg/laws/ldoc/2135491478> (last accessed on 6.11.2009).

⁹ This is broader than the concept of disability elaborated by the European Court of Justice (ECJ) in case C-13/05 as it does not require the limitation to result in ‘hinder[ing] the participation of the person concerned in professional life’.

¹⁰ Bulgaria/Закон за интеграция на хората с увреждания [Integration of Persons with Disabilities Act] (01.01.2005) § 1.2 Additional Provision.

¹¹ This definition is reproduced literally in the Employment Encouragement Act, § 1.29 Additional Provision.

hindrance to participation, a threshold of 50% incapacitation, and official medical certification of the latter. People with permanent disabilities are entitled to benefit from extended protection and inclusion measures. All disability provisions in Bulgarian legislation are based on the concept of providing protection or additional rights to people with a certain percent of reduced social functioning or working capacity and not on the basis of a particular diagnosis.

Preferential treatment arrangements in respect of persons with mental disorders and persons with an intellectual disability

- [10]. The Protection Against Discrimination Act (PADA) not only authorises but mandates positive measures to equalise the opportunities of disadvantaged groups. The Act provides for several specific exceptions to the principle of equal treatment to enable positive action, including different treatment of persons with disabilities through training or education aimed at equalising their opportunities¹² and special protection measures provided for by law for the benefit of parentless children, minors, single parents and persons with disabilities.¹³ The Act places a duty on all authorities to take measures to equalise the opportunities of disadvantaged groups. The Act requires authorities to take such measures as a priority for the benefit of victims of multiple discrimination.¹⁴ The *Конституционен съд* [Constitutional Court] has held that preferential treatment on constitutionally protected preferential measures based on other grounds, excluded from the constitutional equality clause, such as disability or age, are constitutional.¹⁵ There is no case-law on anti-discrimination/equality rules in Bulgaria in respect of persons with mental disorders and disabilities. Several cases have been brought during the period 2007-2009 but they have not yet been decided by the national courts.
- [11]. Importantly, the Protection Against Discrimination Act stipulates that construction and maintenance of an architectural environment hindering the access of persons with disabilities to public places constitutes discrimination.¹⁶ This is an absolute ban, with no proportionality defence. In practice, however, in cases where persons with disabilities have contested a city administration's failure to make the architectural environment accessible, the courts have failed to hold the authorities liable for this omission, even though in several cases they declared that the public environment placed claimants at a disadvantage because it hampered their access to public places, and, therefore constituted indirect discrimination against them.¹⁷ Only the *Върховен касационен съд* [Supreme Cassation Court] held on several cases that the applicants had been discriminated against by not having access to public buildings and awarded them compensation. Further, under the Integration of Persons with Disabilities Act public bodies have absolute duties to create disability-accessible architectural environments, transportation services, and sports facilities.¹⁸ Failures to do so have been contested under general tort law, but not under discrimination law.

¹² Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art.7, para.1, item 10, available in English at: http://www.kzd-nondiscrimination.com/index.php?option=com_content&task=view&id=15&Itemid=30, (last accessed on 06.11.2009).

¹³ Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art.7, para.1, item 14.

¹⁴ Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art.11, para.2.

¹⁵ Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art.11, para.2.

¹⁶ Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art.5.

¹⁷ The courts have reasoned that the authorities had taken some action aimed at securing access to public places for persons with disabilities, and achieving that result was a lengthy and costly process. In effect, they have applied a proportionality test, even though they have not used this name and despite the lack of legal basis for it. Case *N.G.I. vs Plovdiv municipality*, No 1718/2005 – Plovdiv Regional Court and No 51/2007 – Plovdiv Appellate Court, Case *D.G. vs Plovdiv municipality*, No 1563/2005 - Plovdiv Regional Court and No 722/2006 - Plovdiv Appellate Court, Case *R.B. vs Plovdiv municipality*, No. 966/2005 - Plovdiv Regional Court and No 81/2007 - Plovdiv Appellate Court, and others.

¹⁸ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 33-34, 36, 38.

- [12]. Substantive disability rights are provided for under a number of laws. The Integration of Persons with Disabilities Act (IPDA) bans both direct and indirect disability discrimination, and provides for reasonable accommodation in education, with duties for central and local government and universities. It also provides for reasonable accommodation in employment, as well as for positive measures, including financial incentives for employers. Furthermore, it regulates sheltered employment for persons with disabilities, termed ‘specialised enterprises and cooperatives of people with disabilities’. The Act creates duties for public bodies for architectural and infrastructural accessibility, including urban planning, transportation, sports facilities, kindergartens, and the mass media. It also provides for the social protection of persons with disabilities, including via aids, devices, and medical facilities; for tax preferences for individuals and for employers providing sheltered employment; for monthly monetary allowances for integration and rehabilitation; as well as for targeted financial assistance and subsidies for particular goods and services. The Act finally provides for the means of funding the positive and accommodation measures specified. Under the IPDA persons with permanent disabilities (including people with intellectual disabilities and mental disorders who have been certified as having a reduced working capacity of 50% or over) are entitled to: a monthly monetary allowance for transportation, information and telecommunications, rehabilitation, medication, municipal housing rent, and dietary products (Art. 42); employment contracts no shorter than three years with employers who have been awarded public monies for reasonable accommodation (Art. 25); no less than half of the quota of special jobs appointed for reassignment under the *Кодекс на труда* [Labour Code] (Art. 27); tax preferences for working persons; a monthly allowance equivalent to 70% of the minimum working wage for parents and carers for children with permanent disabilities (Art. 43); targeted assistance and subsidies for buying a car, housing adaptation and personal assistants; grants and other subsidies or students; municipal housing.
- [13]. Further, the Labour Code¹⁹ provides for reasonable accommodation and sheltered employment for people with disabilities. It also provides for special protection against dismissal for persons with disabilities. Under the Code, workers who have benefited from accommodation and workers suffering from particular diseases specified by the government may not be dismissed at all unless the labour inspectorate consents beforehand.²⁰ The courts will invalidate any dismissal without the labour inspectorate’s prior consent. The *Закон за насърчаване на заетостта* [Employment Encouragement Act]²¹, and a number of special laws governing particular fields such as education, taxation, and public procurement provide for special rights and positive measures for people with disabilities.
- [14]. The *Правилник за прилагане на Закон за социалното подпомагане* [Regulations on Implementing the Social Assistance Act] provide for sheltered accommodation as a social service in the community.²² The *Агенция за социално подпомагане* [Social Assistance Agency] within the *Министерство на труда и социалната политика* [Ministry of Labour and Social Policy] has issued two sets of Methodological Guidelines outlining the conditions for providing this service to people with intellectual disabilities and to young people from social care institutions respectively. The two sets of guidelines specify the terms and conditions for opening and closing sheltered accommodation facilities; for their management and staffing; and for the use of the service by beneficiaries.

¹⁹ Bulgaria/*Кодекс на труда* [Labour Code] (01.01.1987), available at <http://lex.bg/bg/laws/ldoc/1594373121> (last accessed 06.11.2009).

²⁰ Bulgaria/*Кодекс на труда* [Labour Code] (01.01.1987), Art. 333, para.1, items 2 and 3 (adopted on 31.03.2001).

²¹ Bulgaria/*Закон за насърчаване на заетостта* [Employment Encouragement Act] (01.01.2002), available at: <http://lex.bg/bg/laws/ldoc/-12262909> (last accessed on 06.11.2009).

²² Bulgaria/*Правилник за прилагане на Закон за социалното подпомагане* [Regulations on Implementing the Social Assistance Act], (1.11.1998), Art. 36, para.2, item 7, available at: <http://lex.bg/bg/laws/ldoc/-13038592> (last accessed on 06.11.2009).

- [15]. The Integration of Persons with Disabilities Act (IPDA) provides for the employment of people with disabilities in a 'specialised work environment', as well as in integrated employment.²³ The Labour Code provides for 'specialised enterprises and workshops for persons with reduced working capacity' and places a duty on the government and municipalities to set up such enterprises, and on large employers with more than 300 workers to set up such workshops.²⁴ The terms and conditions of employment in these sheltered facilities are to be determined by the government.²⁵ The IPDA reserves the status of 'specialised enterprises and cooperatives of people with disabilities' for businesses who employ at least 20% people with visual impairments, at least 30% people with hearing impairments, or at least 50% people with other disabilities.²⁶ Under this law, such businesses are eligible for government subsidies based on approval of particular projects.²⁷ Further, under the *Закон за обществените поръчки* [Public Procurement Act],²⁸ such enterprises are exclusively entitled to bid for public procurement contracts for particular items determined by the government. Under tax and social security legislation, such enterprises are entitled to preferences and subsidies in 2005, there were 91 specialised cooperatives and enterprises in Bulgaria, employing 14,573 people.²⁹ The market share of their production has reduced in recent years and a significant number of workplaces have been closed because their products could not meet market quality standards.³⁰ Specialised workplaces are segregated and inadequate to facilitate the integration of people with disabilities. Sheltered employment in 'specialised enterprises and workshops' is unequivocally considered as employment under national law.³¹
- [16]. Bulgarian legislation that transposes the Employment Equality Directive does not specifically consider that the notion of 'disability' includes persons with mental disorders (see the definition of disability above).
- [17]. Further, under the Integration of Persons with Disabilities Act, the Minister of Education has a duty to provide children with disabilities with a supportive environment for their integrated education.³² This is an absolute duty under the legislation, with no justification of a disproportionate burden. The courts have held that this duty will only be satisfied when there is a supportive environment for integrated education in every kindergarten and school in the nation. The Minister of Education has also an absolute duty to create educational opportunities for children with disabilities who are not integrated into a common

²³ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 22.

²⁴ Bulgaria/*Кодекс на труда* [Labour Code] (01.01.1987), Art. 316 (adopted on 31.03.2001, last amended on 1.07.2009).

²⁵ Bulgaria/*Кодекс на труда* [Labour Code] (01.01.1987), Art. 316 (adopted on 31.03.2001, last amended on 1.07.2009).

²⁶ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 28, para.1.

²⁷ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 28, para.2.

²⁸ Bulgaria/*Закон за обществените поръчки* [Public Procurement Act] (1.10.2004), Art. 16 в, available at: <http://lex.bg/bg/laws/ldoc/2135482815> (last accessed on 6.11.2009).

²⁹ EUMAP, Rights of People with Intellectual Disabilities: Bulgaria 2005, http://www.eumap.org/topics/inteldis/reports/national/bulgaria/id_bul.pdf (last accessed on 06.11.2009).

³⁰ EUMAP, Rights of People with Intellectual Disabilities: Bulgaria 2005, http://www.eumap.org/topics/inteldis/reports/national/bulgaria/id_bul.pdf (last accessed on 06.11.2009).

³¹ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 22 and *Кодекс на труда* [Labour Code] (01.01.1987), Art. 320.

³² Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 17, para.2.

educational environment.³³ Higher education institutions also have absolute accommodation duties under the same Act.³⁴

Reasonable accommodation

- [18]. The PADA provides for reasonable accommodation for persons with disabilities in employment and education.³⁵ The limit of the duty is when ‘the costs are unreasonably large and would seriously hinder’ the employer or educator.³⁶ An identically-worded duty for employers is reproduced in the IPDA.³⁷ Other than this language, there is no guidance under either law about what is ‘reasonable’ or a ‘disproportionate burden’. There is no provision for taking existing opportunities for public financial help into account when determining what cost is excessive. In addition, under the Labour Code employers are under a duty to provide accommodation for workers who are unable to perform their job because of illness or accident.³⁸ This duty pre-dates both the PADA and the IPDA. It has no disproportionate burden limit and the accommodation in question is based on instructions by the health authorities. An employer who fails to comply with such an instruction owes the employee compensation *ipso iure*.³⁹
- [19]. Under the *Закон за здравословни и безопасни условия на труд* [Healthy and Safe Work Conditions Act], employers are under a duty to provide appropriate facilities for employees with a reduced work capacity, i.e. people with disabilities, at their workplaces.⁴⁰ Employers are to be assisted and advised in adapting the job to employees’ capabilities in consideration of their physical and mental health by special labour health authorities.⁴¹
- [20]. Failure to meet the duties for reasonable accommodation in employment or education under the PADA is not defined as discrimination. There is no provision relating such a failure to the bans on direct or indirect discrimination. This also applies to the failure to meet the various absolute accommodation duties under the Integration of Persons with Disabilities Act, the Labour Code, and the Healthy and Safe Work Conditions Act. In several cases, judges have found that failure to provide what has been in effect reasonable accommodation to people with disabilities constituted direct (rather than indirect) discrimination.
- [21]. There is a disproportionate burden defence under the PADA for employers and educators, namely where the costs are ‘unreasonably large’ or would ‘seriously hinder’ the organisation. Under the Integration of Persons with Disabilities Act, there is a proportionality defence for employers, but not for public bodies or universities. However, the courts have systematically and blatantly disregarded the law in this respect, refusing to accept that partial/ineffectual measures are not enough for public bodies to deliver on their duties to provide accessibility. Judges have reasoned, on no legal basis, that creating

³³ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 18.

³⁴ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 20.

³⁵ Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art.16 and Art. 32.

³⁶ Bulgaria/*Закон за защита от дискриминация* [Protection Against Discrimination Act] (01.01.2004), Art. 16 and art. 32.

³⁷ Bulgaria/*Закон за интеграция на хората с увреждания* [Integration of Persons with Disabilities Act] (01.01.2005), Art. 24.

³⁸ Bulgaria/*Кодекс на труда* [Labour Code] (01.01.1987), Art. 314. Such accommodation can include both modifications to work conditions for the same job, or reassignment to another job.

³⁹ Bulgaria/*Кодекс на труда* [Labour Code] (01.01.1987), Art. 317, para.4.

⁴⁰ Bulgaria/*Закон за здравословни и безопасни условия на труд* [Healthy and Safe Work Conditions Act] (23.12.1997), Art. 16, para.1, item 4, available at: <http://lex.bg/bg/laws/ldoc/2134178305> (last accessed on 6.11.2009).

⁴¹ Bulgaria/*Закон за здравословни и безопасни условия на труд* [Healthy and Safe Work Conditions Act] (23.12.1997), Art. 25, para.2, item 3. These authorities are charged, *inter alia*, with monitoring and analysing employees’ state of health according to Art. 25a, para.1, item 3 and para. 1, item 4 (adopted on 18.05.2007).

accessibility is a 'lengthy' and financially burdensome process, and therefore the remaining inaccessibility did not amount to unlawful inaction on the part of the authorities because of their having undertaken partial measures.⁴²

Equality body competency to deal with cases of discrimination on the grounds of intellectual disability

- [22]. The equality body – the Protection Against Discrimination Commission (PADC) - has the powers to initiate proceedings about discrimination itself, to investigate all facts related to them, to issue binding decisions declaring discrimination and imposing fines and binding instructions. It also has the power to carry independent surveys and to issue recommendations. Among its members there are only two who have had some expertise in the field of people with disabilities and primary and secondary education.⁴³ The PADC's case-law shows it is not sufficiently competent to deal with discrimination on the grounds of intellectual disability as its staff are insufficient in number and inadequately qualified and the case-law is vague.
- [23]. There are several examples of cases and surveys undertaken by the PADC that show its willingness (but disputable competence) to deal with cases of discrimination on the grounds of intellectual disability. In 2007 an expert group of the PADC monitored 22 special schools for children with intellectual disabilities with the task of establishing whether there is discrimination in the admittance procedure and educational process at such schools in respect of children of minority ethnic origin and children with disabilities. The group issued a decision with recommendations on 16.10.2007 to the Ministry of Education and the State Agency for Child Protection on measures to eliminate the practice of these schools of admitting children who have not been properly assessed and for whom other possibilities of mainstream schooling were not exhausted.⁴⁴ It was also recommended that physical access to the special schools and the level of specialised education in them was improved.
- [24]. The PADC also considered a case initiated by mothers of intellectually disabled children who were denied vocational training because of the Regulation for Implementation of the Public Education Act that prohibits citizens from acquiring the same level of education twice.⁴⁵ In its decision of 28.05.2009 the PADC recommended that the Minister of Education amend the Regulation so that it complies with the European Social Charter, the European Convention on Human Rights and the International Covenant on Economic, Social and Cultural Rights and obliged the head of the Regional Educational Inspectorate in Sofia to take appropriate measures to ensure that unequal treatment of students with intellectual disabilities in special schools in Sofia would be discontinued.

⁴² Thus, Decision N 73 of 09.02.2007 of the Plovdiv Appellate Court in civil case N 51/2007, *Nikolay Ivanov v City of Plovdiv*; Decision N 96 of 19.02.2007 of the Plovdiv Appellate Court in civil case N 50/2007, *Nikola Kitukov v City of Plovdiv*; Decision N 144 of 29.06.2007 of the Plovdiv Appellate Court in civil case N 78/2007, *Lilyana Ivanova v City of Plovdiv*; Decision N 105 of 04.07.2007 of the Plovdiv Appellate Court in civil case N 81/2007, *Rossitza Belcheva v City of Plovdiv*. Such reasoning is in direct contravention to the Integration of Persons with Disabilities Act, which expressly stipulates an absolute time limit for accomplishing accessibility to public-owned buildings and infrastructure, now long past – 31 December 2006 (Transitional and Final Provisions of the Act, § 6).

⁴³ One of them is the founder and leader of the group 'Parliamentarians for interaction with people with disabilities and individuals with unequal opportunities in Bulgaria' and the other is a bachelor in pre-school and primary school education.

⁴⁴ Bulgaria/Годишен доклад на Комисия за защита от дискриминация за 2007 г. [2007 Annual report of the Protection Against Discrimination Commission], p.102, available in English at: <http://www.kzd-nondiscrimination.com/images/stories/pdf/annual%20report%202007.pdf> (last accessed on 06.11.2009).

⁴⁵ Bulgaria, Decision 87 (28.05.2009), *Комисия за защита от дискриминация* [Protection Against Discrimination Commission].

4. Specific Fundamental Rights

- [25]. According to the Bulgarian Constitution, ‘all persons are born free and equal in dignity and rights’,⁴⁶ and ‘all citizens shall be equal before the law’. However, there is no explicit guarantee of equal treatment for people with disabilities of any kind. Further, the Constitution states that ‘fundamental civil rights shall be irrevocable’, and a person’s ‘rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others.’⁴⁷ Referring specifically to people with mental disabilities, the Constitution provides that such people shall enjoy ‘special protection of the State and society.’⁴⁸ The Health Act provides that no-one can be diagnosed with mental disorder on the basis of family, professional or other conflicts or past mental disorders.⁴⁹

4.1. The Right to life

- [26]. The Constitution provides that ‘everyone shall have the right to life’ and that ‘any attempt upon a human life shall be punished as a most severe crime’.⁵⁰ However, a Bulgarian human rights NGO, the Bulgarian Helsinki Committee (BHC), did not observe any effective investigation or prosecution of cases of fatality of people with mental disabilities living in institutions and medical facilities.⁵¹ It reports that ‘events such as death caused by the negligence of duties of the staff of an institution and/or due to insufficient staff are still not recognised as reasons to incur liability’.⁵²
- [27]. The same NGO carried out systematic monitoring of psychiatric hospitals in 2005 and concluded that ‘there was a lack of information about the causes of death and no feedback on correcting the circumstances that have resulted in cases of fatality’.⁵³ According to a 2005 report ‘the reasons for death were not known because death certificates most often state “ACVD-acute cardiovascular deficiency”’.⁵⁴ Only some hospitals have adopted the practice of autopsy - for most cases it is avoided by means of a request and a declaration signed by the relatives. This procedure is sometimes appropriate for patients undergoing voluntary treatment, but is absurd and illegal for committals. During 2005 the BHC came across several cases of fatalities in psychiatric hospitals. After carrying out a thorough

⁴⁶ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 6. para.1, available in English at: <http://www.parliament.bg/?page=const&lng=en> (last accessed 06.11.2009).

⁴⁷ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 57, para.1.

⁴⁸ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 51, para.3.

⁴⁹ Bulgaria/Закон за здравето [Health Act] (01.01.2005), Art. 147, para.2.

⁵⁰ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 28.

⁵¹ 2007 Annual Report, Human Rights in Bulgaria, Bulgarian Helsinki Committee, p.44, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 6.11.2009).

⁵² For example, in early 2007 a woman in a home in the village of Radovsti left the home in unclear circumstances. The home’s administration did not inform her relatives for several days. In the end they were finally notified and thanks to their proactiveness and insistence, a search was carried out and the woman was found dead. According to the relatives, there is ample evidence that the victim was medically neglected and abused, including sexually, when she was alive. The lack of care for the victim resulted in her freezing to death. However, all this was insufficient for the prosecutor’s office to see that a crime had been committed against the victim and the case was closed without an effective investigation.

⁵³ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, p.25, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed 06.11.2009).

⁵⁴ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, p.25, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed 06.11.2009).

investigation it represented the victim's relatives to the public prosecution service and the courts. One such case is described in Annex 2 at the end of this research.

- [28]. In 2008 the European Court of Human Rights (ECHR) ruled against Bulgaria in a case of violation of the right to life of a mentally ill person. The judgment addresses, for the first time, the inability of social care institutions to protect the life of people accommodated in them. In its ruling of 17.01.2008 on the case *Dodov v. Bulgaria* the Court held that the Bulgarian authorities had violated Article 2 of the European Convention on Human Rights.⁵⁵ Two more cases are pending before the ECHR for the deaths of a patient in a psychiatric hospital (I.V., E.V. (mother) and N. V. (father) vs a psychiatric hospital) and a woman in a social care institution (V.L. vs a social care institution). Descriptions of these cases are included in the Annex at the end of the report.

4.2. The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

- [29]. The Bulgarian Constitution provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation, and that no one shall be subjected to medical, scientific or other experimentation.⁵⁶ The Bulgarian Helsinki Committee reported that during its site visits to social institutions outside the community, its researchers encountered many complaints of punishment inflicted by staff for behaviour considered 'undesirable'. Apart from deprivation of social opportunities, involuntary heavy labour, physical punishment and humiliating treatment are also used.⁵⁷ Such punishment was also applied to people who had left the institutions without permission. In 2007 the BHC was also informed by many people with mental disabilities and their relatives of violence exercised at social institutions and psychiatric hospitals. The victims were dependent on the perpetrators and feared future abuse, which poses a great problem to the effective protection of these people. The lack of effective investigation of the much more grave cases that have resulted in death and the failure to appreciate the sufferings of people with mental problems make the fears of these people and their relatives very real. The research did not find any case-law of national courts on the protection of people with mental disabilities from cruel, inhuman and degrading treatment.

⁵⁵ 2008 Annual Report, *Human Rights in Bulgaria*, Bulgarian Helsinki Committee, p.5, available in English at: http://www.bghelsinki.org/upload/resources/Humanrights2008_en.pdf (last accessed 06.11.2009). In 1995, the applicant's mother, Mrs Stoyanova, who had Alzheimer's disease, disappeared from an institution for elderly people with dementia, located in Sofia's Knyazhevo neighbourhood. She was never found. The Court held that there had been a direct connection between Mrs Stoyanova's disappearance and the authorities' inability to provide oversight over her. The Court ruled that in this case the Bulgarian state had not provided means of protection that would establish the circumstances of the disappearance and the responsibility of the culprits. During criminal proceedings, the investigating bodies had come to conflicting decisions, without even investigating the issue of negligence of staff at the institution. No disciplinary actions were initiated against those responsible, and after more than ten years the civil lawsuit for damages is still pending at first instance.

⁵⁶ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 29.

⁵⁷ 2007 Annual Report, *Human Rights in Bulgaria*, Bulgarian Helsinki Committee, p.44, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 06.11.2009).

4.3. The right to freedom from exploitation

- [30]. According to the Constitution the State should create conditions conducive to the exercising the right to work by the physically or mentally disabled.⁵⁸ Further, it provides that ‘everyone shall be free to choose an occupation and place of work and no one shall be compelled to do forced labour’.⁵⁹ Workers and employees are entitled to healthy and non-hazardous working conditions, to guaranteed minimum pay and remuneration for actual work performed, and to rest and leave, in accordance with conditions and procedures established by law.⁶⁰ Our research did not find any case-law of national courts on the protection of people with mental disabilities from exploitation.

4.4. The right to liberty and security

- [31]. The Bulgarian Constitution provides that ‘everyone shall be entitled to personal freedom and inviolability’⁶¹ and that ‘no one shall be detained or subjected to inspection, search or any other infringement of his personal inviolability except on the conditions and in a manner established by law.’ State authorities are free to detain citizens only in the urgent circumstances expressly stipulated by law, and must immediately advise the judicial authorities accordingly. The judicial authorities should rule on the legality of a detention within the next 24 hours.⁶² The Constitution entitles everyone to legal counsel from the moment of detention or from the moment of being charged⁶³ and to meet his legal counsel in a private and confidential environment. According to the Bulgarian Helsinki Committee the placement in social care institutions of people with mental disabilities occurs under an administrative procedure, without supervision by the court and is often arbitrary.⁶⁴ The legislation governing placement remains unchanged.⁶⁵ Our research did not find any case-law of national courts on the protection of people with mental disabilities from violations of their right to liberty and security.

4.5. The right to fair trial

Rights during the compulsory treatment procedure

⁵⁸ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 48, para.2.

⁵⁹ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 48, para. 3.

⁶⁰ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 49, para. 4.

⁶¹ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 30, para.1.

⁶² Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 30, para.3.

⁶³ Bulgaria/Конституция на Република България [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 30, para.4

⁶⁴ 2007 Annual Report, Human Rights in Bulgaria, Bulgarian Helsinki Committee, April 2008, p.44, available in English at:<http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 06.11.2009) and 2006 Annual Report, Human Rights in Bulgaria, Annual Report of the Bulgarian Helsinki Committee, March 2007.

⁶⁵ 2007 Annual Report, Human Rights in Bulgaria, Bulgarian Helsinki Committee, April 2008, p.44, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 6.11.2009).

[32]. The Health Act (01.01.2005) provides for the obligation to obtain an expert medical statement about the mental condition of a person whose detention is requested and about the potential danger ensuing from his/her state; from its very beginning the procedure is carried out before a court and entitles the detainee to appeal the placement order, as well as to have a court-appointed legal representative; it sets time limits for issuing the medical examination report and scheduling court hearings; it also shortens the term of compulsory treatment to three months. However, the BHC reports that in practice people suffering from mental illness and placed in psychiatric hospitals are by definition deprived of effective access to court during their stay at the psychiatric clinic. Placement in a psychiatric clinic may be voluntary or compulsory/involuntary. In all cases, access to court is non-existent.⁶⁶ A person detained at a psychiatric clinic as an emergency case has no access to the guaranteed right to contact a lawyer and/or relative, to immediately consult another doctor, or to keep his or her personal items and valuables as there is no obligation under the Health Act for the court to be notified. Practice indicates that such a person may be detained for more than a week, subjected to medical treatment and deprived of any opportunity to file a complaint with a court for a violation of his or her rights.⁶⁷ Problems with the right to access courts are also observed in cases of compulsory treatment (of people who lack are not responsible for their actions who are likely to commit a crime). Court protection of people with mental illness in cases of compulsory treatment is formalistic and is rarely provided by competent lawyers.⁶⁸ In the cases of detention for treatment in a clinic there are no rules on confidentiality of correspondence, including the right to maintain correspondence, and no rules for reporting or complaining of violence or abuse in treatment facilities.⁶⁹ This results in a lack of mechanisms to protect their rights and interests during their stay at the medical facility. The cases I.A. and G.B. described at the end of the report in the Annex provide more details about violations of the right to a fair trial in practice.

Rights during incapacitation procedure

[33]. There are a number of concerns regarding the adequacy of procedural protection for people with intellectual disabilities or mental disorders who are subject to incapacitation proceedings. Under Bulgarian legislation, an adult who is to be incapacitated has the right to be notified no less than seven days before the court hearing,⁷⁰ to be heard in person during the first court hearing (there is no obligation on the court to involve the person concerned in any subsequent hearings),⁷¹ to present evidence and call witnesses⁷² and to examine and challenge the evidence presented by the opposing party⁷³ and to receive free legal aid upon submission of an application.⁷⁴ Guardianship legislation obliges the court to provide information to the person subject to the incapacitation procedure about the rights to present his/her own witnesses, to be present for the presentation of witnesses of the opposing party

⁶⁶ □ *2007 Annual Report, Human Rights in Bulgaria*, Bulgarian Helsinki Committee, April 2008, p.45, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 06.11.2009). In case of informed consent for treatment, it is assumed that the treatment and the stay at the psychiatric clinic are voluntary. However, there are many cases in which 'informed consent' is obtained by manipulation and violence. Detention at a psychiatric clinic and treatment in the case of fictitious, null or questionable consent of the patient is one of the most severe violations of the right to effective court protection of people with mental problems.

⁶⁷ *2007 Annual Report, Human Rights in Bulgaria*, Bulgarian Helsinki Committee, April 2008, p.45, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 06.11.2009)

⁶⁸ *2007 Annual Report, Human Rights in Bulgaria*, Bulgarian Helsinki Committee, April 2008, p.45, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 06.11.2009)

⁶⁹ *2007 Annual Report, Human Rights in Bulgaria*, Bulgarian Helsinki Committee, April 2008, p.45, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 06.11.2009)

⁷⁰ *Bulgaria/Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.56, para.3, available in English at: <http://www.sac.government.bg/home.nsf/0/BEED3F0C3B9ADD43C2256FCD004DA169?OpenDocument> (last accessed 06.11.2009).

⁷¹ *Bulgaria/Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.337.

⁷² *Bulgaria/Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.8, para.2.

⁷³ *Bulgaria/Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.8, para.3.

⁷⁴ *Bulgaria/Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.95.

and to challenge them, to have a lawyer,⁷⁵ to nominate one expert witness⁷⁶ and to appeal the court decision.⁷⁷ However, legislation does not require a capacity evaluation before an adult is deprived of legal capacity. There are no minimum standards for the contents or quality of capacity evaluations. The court is not legally obliged to appoint an expert to conduct a capacity assessment if it is satisfied by its direct observation and other evidence that it has a proper ‘impression’ of the mental functioning of the adult.⁷⁸ Bulgarian law does not specifically allow for or prohibit appeal rights in guardianship cases. The *Граждански процесуален кодекс* [Civil Procedure Code] generally specified 14 days to file an appeal if the person was present at the court hearing where the decision was announced.⁷⁹ If the person is not present, he/she has 14 days from the date of notification of the decision.⁸⁰ Decisions of the ‘guardianship authority’ (i.e. the mayor) may be appealed to the district court by interested parties or by a State prosecutor, but not directly by the person under guardianship. A person under plenary (full) guardianship is not eligible to appeal the decisions of the guardianship authority at all. People under partial guardianship may, with the consent of their guardian, file such appeals. In such cases, the decision of the district court is not subject to appeal.⁸¹

- [34]. Additionally, during the administrative proceedings for the appointment of a guardian, neither the presence nor the opinion of the adult is required by law. Bulgarian law does not contain any provision for a periodic review of the need for guardianship. Adults under partial guardianship have the right to request termination of guardianship with the consent of their guardian.⁸² Adults under plenary guardianship may only request that the guardianship authority or the guardian file an application on their behalf but have no right to do this for themselves.⁸³ If the guardian and the guardianship authority refuse, the adult can ask a State prosecutor to file for revocation of the guardianship.⁸⁴ However, if the prosecutor in turn refuses, there is no recourse for an adult under plenary guardianship. This is an issue in several cases currently pending before the European Court of Human Rights (D.M. and R.S. described in the Annex at the end of the report). Both of them concern men with mental disorders placed in social care institutions against their will, who are able to take care of their own affairs but were incapacitated at the request of their family members. They therefore live in social care institutions as their property was taken away by their relatives and they are deprived of the right to vote, right to have a personal life, right to receive and manage money, and right to work.

4.6. The right to privacy, including the access to one's own confidential medical records

- [35]. The Constitution provides that the privacy of citizens shall be inviolable⁸⁵ and that everyone is entitled to protection against any unlawful interference in his private or family affairs and against encroachments on his honour, dignity and reputation. Further it states that no one shall be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except when such actions are

⁷⁵ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.99.

⁷⁶ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.195.

⁷⁷ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.258.

⁷⁸ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art. 331.

⁷⁹ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.258.

⁸⁰ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.259.

⁸¹ Bulgaria/*Семеен кодекс* [Family Code] (01.10.2009), Art.161.

⁸² Bulgaria/*Върховен Касационен Съд* [Supreme Court of Cassation], Decree 5/79 (13.02.1980), para. 10.

⁸³ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art. 28, para.4 and Art.340, para.2.

⁸⁴ Bulgaria/*Върховен Касационен Съд* [Supreme Court of Cassation], Decree 5/79 (13.02.1980), para. 10.

⁸⁵ Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 32.

permitted by law. Under the Health Act all patients have the right to protection of their personal data related to their state of health.⁸⁶ Medical professionals who process and store this information are obliged to protect information on a patient's state of health from improper access.⁸⁷ However, for patients with mental disorders the Ministry of Health maintains a national register, the organisation and use of which is regulated by a Ministry of Health ordinance.⁸⁸

- [36]. There is no legal requirement for guardians to consult the adult subject to guardianship on any decisions. Although guardians are required to make decisions that promote the adult's interests, there are no provisions, with limited exceptions relating to medical treatment, that provide for obtaining the adult's consent.⁸⁹ Our research did not find any case-law of national courts on the protection of the privacy of people with mental disabilities.

4.7. The right to marry, to found a family and to respect of family life

- [37]. People with mental disorders or intellectual disabilities under plenary guardianship are categorically prohibited from marrying and from signing marital contracts.⁹⁰ They are also prohibited from fostering children, and may be restricted from raising their own children. People under any type of guardianship are not allowed to adopt children,⁹¹ although the *Българският Върховен съд* [Bulgarian Supreme Court] does not regard people under partial guardianship as legally incapable and thus the issue is open as to whether these people might be eligible to adopt children.⁹² The consent of the parents or adoptive parents under plenary guardianship of a child registered for adoption is not sought if they are placed under guardianship.⁹³ The guardianship authority has the authority to appoint a guardian not only for adults who have been incapacitated but for their minor children as well. The Supreme Court has held that 'persons under partial guardianship are not restricted in taking care of their children and exercising parental rights.'⁹⁴

4.8. The right to have children and maintain parental rights

- [38]. The Family Code provides that the district court may restrict the parental rights of a person with a prolonged physical or mental disease which limits his/her ability to exercise these rights.⁹⁵ The district court may also apply the same measures when the behaviour of the

⁸⁶ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 86, para.5.

⁸⁷ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 28, para.3.

⁸⁸ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 147a (02.06.2009).

⁸⁹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 87, para.2.

⁹⁰ Bulgaria/*Семеен кодекс* [Family Code] (1.10.2009), Art.7. para. 1, item 2 'Marriage cannot be contracted by a person who has been placed under plenary guardianship or suffers from a mental disease or imbecility constituting grounds for his/her placement under plenary guardianship.' and Art. 37, para.2.

⁹¹ Bulgaria/*Семеен кодекс* [Family Code] (1.10.2009), Art. 78 – Only a person with legal capacity and who had not been deprived of parental rights is allowed to adopt children.

⁹² Bulgaria/*Върховен Касационен Съд* [Supreme Court of Cassation], Decision N58 (21.02.1989)

⁹³ Bulgaria/*Семеен кодекс* [Family Code] (1.10.2009), Art. 89, para 4. The consent of the parents of a child registered for adoption or the husband/wife of the adopters is not sought if they are placed under guardianship. If they are placed under partial guardianship they may express an opinion (Art. 90, para. 2, item 2, 3). The difference between opinion and consent is that consent is an obligatory condition for the adoption to take place and the opinion is not.

⁹⁴ Bulgaria/*Върховен Касационен Съд* [Supreme Court of Cassation], Decision N58 (21.02.1989).

⁹⁵ Bulgaria/*Семеен кодекс* [Family Code] (1.10.2009), Art. 131, para.2.

parent threatens the personality, the health, the property or the up-bringing of the child. Our research did not find any case-law of national courts on the protection of the right to have children and maintain the parental rights of people with mental disabilities.

4.9. The right to property

- [39]. Bulgarian legislation allows for only two types of guardianship – one that deprives the person of the enjoyment of all his/her rights ('plenary guardianship') and one that nominally has the same effect but allows the person to make decisions with the consent of the guardian ('partial guardianship'). These two types of guardianship cannot be further tailored according to the needs of the person in question. The law does not ensure that people under guardianship have the right to make decisions in areas where they have functional capacity. In plenary guardianship, the guardian makes all decisions for the adult,⁹⁶ while in partial guardianship cases, the adult has some authority to make decisions on his/her own behalf, but only very basic decisions of an everyday nature. In all other decisions, the guardian has the authority to decide by granting or withholding consent.⁹⁷ Thus even an adult under partial guardianship is effectively precluded from making any decisions on his/her own behalf since the guardian has a right of veto.
- [40]. Restrictions are placed on nearly all of the financial transactions of persons with intellectual disabilities and mental disorders under guardianship as all responsibility for monetary issues is handed to the guardian. Only adults under partial guardianship are allowed to enter legally effective transactions of an everyday nature,⁹⁸ but there is no definition of what 'everyday needs' means.⁹⁹ In all other cases a person under guardianship can perform legal actions concerning his/her property only with the consent of the guardian. Under plenary or partial guardianship, adults are legally prevented from entering into contracts of any kind.¹⁰⁰
- [41]. According to the Bulgarian Helsinki Committee, 'people with mental disabilities often fall victim to various types of property fraud and abuse'.¹⁰¹ Some of them are placed under guardianship and accommodated in a social care institution outside the community by relatives, with the clear purpose of robbing them. Sometimes people from outside the family also take advantage of the fact that someone with a mental disability is placed in a psychiatric facility by court order to defraud them. The report also emphasises that usually such cases cannot reach the prosecutor's office due to the victims' inability to initiate legal proceedings to protect themselves or due to their dependence on the perpetrators of the fraud.¹⁰² The devaluation of people under guardianship accommodated in institutions, the

⁹⁶ Bulgaria/*Семеен кодекс* [Family Code] (1.10.2009), Art.164, para.3. The guardian is obliged to take care of the incapacitated person, to manage his/her property and to represent him/her before third parties.

⁹⁷ Bulgaria/*Семеен кодекс* [Family Code] (1.10.2009), Art. 168, par.2.

⁹⁸ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (10.09.1949), Art. 4.

⁹⁹ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (10.09.1949), Art.4.

¹⁰⁰ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (10.09.1949), Art. 3-5 (last amended 06.11.1953).

¹⁰¹ 2007 Annual report, *Human Rights in Bulgaria*, Bulgarian Helsinki Committee, April 2008, p.45, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=631> (last accessed 06.11.2009).

¹⁰² 2008 Annual Report, *Human Rights in Bulgaria*, Bulgarian Helsinki Committee, p.38, available in English at: http://www.bghelsinki.org/upload/resources/Humanrights2008_en.pdf (last accessed 06.11.2009). Here is an example of a case of a fraud victim with intellectual disability: M.H. was diagnosed with epilepsy and intellectual disability and lived in the community, owning property and dealing with his everyday life. In 1993, a relative convinced him to transfer by contract all his property to her in exchange for her taking care of him. M.H. agreed, but preserved his right to use his property. Immediately after he had signed the contract, the relative filed a request for his placement under guardianship and had M.H. accommodated in a social institution, with herself as his guardian. She also filed a request that another guardian be appointed, which the guardianship authority [i.e. the mayor] accepted. The newly-appointed guardian was a

failure of mayors of municipalities to exercise control over the actions of guardians, the lack of understanding of the prosecution office of the severity of the crimes against people in this group, as well as the lack of comprehension that the people in this highly vulnerable situation are being neglected, reveal lasting discriminatory attitudes to these people.¹⁰³ Our research did not find any case-law of national courts on the protection of the right to property of people with mental disabilities.

4.10. The right to vote

- [42]. The Constitution of Bulgaria restricts the rights of people deprived of legal capacity in two areas: the right to vote¹⁰⁴ and the right to be elected and serve in the National Assembly.¹⁰⁵ As seen above, people who are placed under guardianship and thus deprived of their legal capacity have either an intellectual disability or mental disorder that prevents them from taking care of their affairs. So all provisions in Bulgarian legislation that restrict in some way the rights of the intellectually and mentally disabled formulate those restrictions in relation to the deprivation of legal capacity, not because of the existence of a disability or disorder itself. The political rights mentioned above are denied to all people under partial and plenary guardianship, regardless of their actual, individual level of functional ability.¹⁰⁶ The Political Parties Act provides that political parties can only be established by Bulgarian citizens who have the right to vote.¹⁰⁷ Thus the prohibition against voting for people under guardianship also leads to prohibitions on other political activities. Adults under guardianship are prohibited from holding public office or professions, including: member of the Supreme Judicial Council;¹⁰⁸ member of cooperatives;¹⁰⁹ employee of the cadastre (the real property registrar);¹¹⁰ member or chairperson of the Economic and Social Council¹¹¹ and member of a municipality council.¹¹² A case on the right to vote while detained for compulsory treatment (G.G.) is described in the Annex at the end of the report.

social worker at the institution in which M.H. was accommodated and was already a guardian of more than 40 other residents. M.H.'s relative took a number of steps to acquire the property. She filed a request for the elimination of M.H.'s right to use the property due to the fact that he had not used them for ten years because he was living in an institution. The court approved the request without conducting any research into the evidence which indicated that M.H. had spent these ten years in an institution against his will. M.H. was hence deprived of his entire income. By signing the contract, he lost his right to pay a reduced fee for the social service he has to use against his will. His guardian sees no problem with his situation. In her opinion, the fact that there are many more people in the same situation explains M.H.'s situation and justifies the actions of everyone involved. In 15 years the guardianship authority has not once requested a report from the guardian about M.H., nor had found anything irregular in regard to M.H.'s placement in an institution.

¹⁰³ 2008 Annual Report, *Human Rights in Bulgaria*, Bulgarian Helsinki Committee, p.38, available in English at: http://www.bghelsinki.org/upload/resources/Humanrights2008_en.pdf (last accessed 06.11.2009).

¹⁰⁴ Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 42, para.1.

¹⁰⁵ Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 65, para.1, Great National Assembly Elections Act (6.04.1990), Art. 3, also Elections for Members of the National Assembly Act (13.04.2001), Art. 3.

¹⁰⁶ Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria] (13.07.1991), Art. 93, para.2, Art.94. By virtue of the fact that a person under guardianship is not eligible to be elected to the National Assembly, a person under guardianship is similarly disqualified from the Presidency and Vice-Presidency.

¹⁰⁷ Bulgaria/*Закон за политическите партии* [Political Parties Act], Art. 4.

¹⁰⁸ Bulgaria/*Закон за съдебната власт* [Judiciary Act], (22.07.1994), Art. 22, para. 1

¹⁰⁹ Bulgaria/*Закон за кооперациите* [Cooperatives Act] (28.12.1999), Art. 7.

¹¹⁰ Bulgaria/*Закон за кадастъра и недвижимите имоти* [Cadastre and Real Estate Register Act] (25.04.2000), Art. 21

¹¹¹ Bulgaria/*Закон за Съвета за икономически и социални права* [Economic and Social Council Act], SG 41, (24.04.2001), Art. 9, para. 1.

¹¹² Bulgaria/*Закон за местното управление и местната администрация* [Local Governing and Local Administration Act] (17.11.1991), Art. 30, para.4.

5. Involuntary placement and Involuntary Treatment

United Nations Committee Against Torture (CAT)

- [43]. The CAT's main areas of concern regarding mental health in 2004 were the poor conditions in homes for persons with mental disabilities and the insufficient steps taken thus far by the authorities to address this situation, including the failure to amend the legislation relating to involuntary placement in such an institution for the purposes of evaluation, and the lack of judicial appeal and review procedures.¹¹³ The CAT recommended that the Bulgarian authorities take all necessary measures to address the situation in homes and hospitals for people with mental disabilities to ensure that living conditions, therapy and rehabilitation provided are not in violation of the requirements of the Convention. In 2009 the Bulgarian authorities reported that the latter problems have been wholly or partially resolved.¹¹⁴

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

- [44]. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited psychiatric hospitals and social care homes for people with intellectual disabilities and mental disorders three times during the period 2002-2006. The 2003 visit was *ad hoc*. Its findings about psychiatric hospitals after the adoption of the new Health Act were the same as those of the Bulgarian Helsinki Committee – that practice does not reflect the legal provisions meant to provide safeguards. The CPT discovered that: the legal term for compulsory treatment was not always respected; periodic reviews of compulsory treatment were occasionally delayed (by up to two weeks) as a result of slow submission of hospital reports to the court and of the courts' slowness in issuing a decision on the continuation or interruption of hospitalisation; the procedural safeguard of legal representation had sometimes been overlooked; the emergency placement procedure was circumvented by improper use of informed consent (patients admitted involuntarily under the emergency placement procedure had subsequently been asked by staff to sign a consent form for treatment); some patients indicated that they did not wish to stay in hospital but the signing of a consent form had the effect of retaining the patients and treating them as 'voluntary' while avoiding court proceedings.¹¹⁵

¹¹³ Conclusions and recommendations of the UN Committee against Torture, BULGARIA, concerns after the considering of the third periodic report of Bulgaria (CAT/C/34/Add.16) at its 612th and 614th meetings (CAT/C/SR.612 and 614), held on 17 and 18 May 2004, C/5(e), D/6(e), available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.32.6.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.32.6.En?Opendocument) (last accessed 06.11.2009).

¹¹⁴ Fourth & fifth consolidated report submitted by the Republic of Bulgaria under Article 19 of the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, para.181, p.30, available at: http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT-C-BGR-4_5.pdf (last accessed 06.11.2009). According to their report 'radically new approaches are taken onboard in the national programmes, based on respect for the human rights of the mentally ill and the phasing out of institutional care where the patient is placed in isolation, and its replacement by a set of services provided at their place of residence, in order for patients to remain part of the community to which they belonged while in good health (so-called community mental care). Therefore, problems concerning inadequate conditions in mental homes, staff shortages etc., are being addressed, including with foreign assistance.'

¹¹⁵ Report to the Bulgarian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21.09.2006, para.150-157, available

- [45]. The CPT also found out that 'it appeared that the approach to informed consent was formalistic and/or circumvented the legal provisions. Some patients indicated that a few days prior to the delegation's visit, they had been given something to sign without understanding what it was.' The CPT also found that hospitals often faced problems in tracing the guardians of legally incompetent patients (the guardianship councils appointed by the mayor were not functioning in practice) and that some patients remained at the hospital after their compulsory treatment had been discontinued by a court decision because they had nowhere to go and/or due to the absence of facilities for outpatient care. The CPT concluded that patients interviewed were not aware of any external avenues of complaint. Regarding cases of fatalities, CPT observed that hospital records did not give the clinical cause of death of patients, and no autopsies were performed.¹¹⁶
- [46]. Regarding social care institutions for mentally disabled persons the CPT found that in 2003 and 2006 that in most cases placement in a specialised institution for persons with mental disabilities leads to a *de facto* deprivation of liberty, and made recommendations concerning the introduction of initial judicial review of placement and automatic reviews at regular intervals, as well as reviews on request of residents. It also found that placement is not based on objective medical opinion, including that of a psychiatrist.¹¹⁷ The Bulgarian authorities stated that they were considering amendments to the *Закон за социалното подпомагане* [Social Assistance Act] and the regulations for its implementation which would introduce court supervision over the placement procedure.¹¹⁸ However, such amendments had not been introduced by the end of 2009.

5.1. Legal Framework

- [47]. The Health Act (HA) (1.01.2005) and supplementing Ordinances constitute the single legal framework for involuntary placement and involuntary treatment of people with mental disorders and intellectual disabilities. The Act sets forth progressively the main measures for the rehabilitation and care of the mentally ill¹¹⁹ and the principles for the treatment of mentally ill persons.¹²⁰ The Health Act provides for the obligation to obtain an expert medical statement about the mental condition of the person whose detention is requested and about the potential danger ensuing from that state; from its very beginning the procedure is carried out before a court and entitles the detainee to appeal the placement order, as well as to have a court-appointed legal representative; it sets a time limit for issuing the medical examination report and scheduling court hearings; it also shortens the term for compulsory treatment to three months.

at:http://www.cpt.coe.int/documents/bgr/2008-11-inf-eng.htm#_Toc163029654 (last accessed 06.11.2009).

¹¹⁶ Report to the Bulgarian Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21.09.2006, para.150-157, available at:http://www.cpt.coe.int/documents/bgr/2008-11-inf-eng.htm#_Toc163029654(last accessed 06.11.2009).

¹¹⁷ Numerous findings of poor hygiene, lack of personal belongings, lack of proper access to a toilet, lack of access to the outside world, lack of protection against ill-treatment from the staff and abuse from other residents, lack of an effective complaint mechanism and lack of a true guardian (as most of the residents had the director or a member of the staff as a guardian) are also described in the CPT reports from social care homes.

¹¹⁸ Report to the 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 16 to 22 December 2003, para.52, available at:<http://www.cpt.coe.int/documents/bgr/2004-23-inf-eng.htm> (last accessed 6.11.2009).

¹¹⁹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 145, para. 1.

¹²⁰ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.148.

- [48]. Under the new HA, people who are likely to commit a crime that constitutes a danger to their relatives, to others, to the public or who seriously threaten their own health due to their illness are subject to committal to inpatient psychiatric facilities.¹²¹

Distinction between involuntary placement and involuntary treatment

- [49]. Bulgarian legislation provides for two types of compulsory/involuntary treatment. In the first case, treatment is provided upon committal to an inpatient facility for compulsory treatment.¹²² The second relates to emergency circumstances and conditions constituting a threat to life.¹²³ The legislative regulation of emergency psychiatric aid is not at variance with the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.¹²⁴ However, practical implementation shows a number of deficiencies. The first type of involuntary/compulsory treatment presumes the existence of an effective committal order by a court. A frequent practice, however, is to start treatment, often involuntarily, upon a patient's emergency placement, which continues while a medical examination report is produced and until a court decision.¹²⁵ Even when patients sign a declaration of informed consent or are admitted voluntarily, in practice they cannot discontinue their treatment and leave the facility as they wish. If their attending physician disagrees, the treatment continues involuntarily.
- [50]. The Bulgarian medical tradition treats the users of health services in an overprotective and paternalistic manner with therapists dominating in their interactions with the patients. A clear legislative definition of informed consent was provided only in 2005. The Health Act provides that registration and medical interventions should be carried out only after the patient has provided informed consent.¹²⁶ The adopted practice in inpatient psychiatric facilities is to have patients sign a declaration of informed consent upon admission where patients state that they are familiar with the treatment and agree to undergo it. It remains quite unclear how much of the information envisaged by the Act is actually given to the patient and in what format.
- [51]. Most patients interviewed during a national monitoring exercise carried out by the Bulgarian Helsinki Committee in 2005 stated that they often sign a declaration, the content of that they do not know or disagree with.¹²⁷

¹²¹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 146, para.1, 1 and 2: 'Persons with mental illnesses who need special health care are as follows: 1. mentally ill with established serious disorder of mental functions (psychosis or grave personality disorder) or with expressed durable mental damage as result of mental disease; 2. persons with moderate, severe or profound mental retardation or vascular and senile dementia; 3. persons with other disorders of mental functions, difficulties in education and troubles in adaptation, requiring medical help, care and support, in order to live adequately in family and in social environment.'

¹²² Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 155.

¹²³ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), HA, Art. 153 and 160, para 2.

¹²⁴ *Principle 11, item 8 from the Principles for the protection of persons with mental illness and the improvement of mental health care, Resolution 46/119, adopted by the General Assembly of the United Nations Organization on 17 December, 1991.*

¹²⁵ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.23, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹²⁶ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 84 and 87. According to Art. 88 '...consent has to be granted after receiving information with respect to: the diagnosis and the nature of the illness, a description of the goals and the nature of the treatment, reasonable alternatives, expected results and prognosis, potential risks related to the proposed diagnostic and treatment methods including side effects and undesirable reactions to medications, pain and other discomforts, the probability of positive effect, the risk to health resulting from the application of other treatment methods or from the refusal to undergo treatment.'

[1]. ¹²⁷ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.24, available in English at:

- [52]. With respect to patients who are on compulsory placement, the Health Act (HA) provides several options for informed consent: 1) patients can give their informed consent (the most common instance), 2) absence of informed consent in emergency medical conditions,¹²⁸ 3) absence of informed consent for in medical interventions relating to the degree of risk posed by a patient, if the patient is judged incapable of granting it,¹²⁹ 4) a court-appointed guardian who grants informed consent,¹³⁰ 5) the court appoints a person to grant informed consent on behalf of the patient where the patient is incapable of so doing.¹³¹ Most often, patients committed are persuaded to sign a declaration of informed consent under the threat of a court committal procedure.¹³² By signing the document, patients change their status from ‘committed’ to ‘admitted for voluntary treatment’. These ‘voluntary patients’ usually find that they are not in fact ‘voluntary’ once they decide to leave the hospital or terminate their treatment prior to a decision by their attending physician. The law allows for other people, usually a close relative, to act on behalf of the patient. If the patient has no relatives or in the case of a conflict of interest, the court appoints a person from the municipal administration.¹³³ Very often, other staff from the municipal or hospital administration sign the documents instead of the persons assigned by the court. During all visits in 2005, BHC researchers did not find a single case where the Minister of Health via authorised representatives from the *Регионален център по здравеопазване* [Regional Health Center (RHC)] conducted investigated or reviewed complaints regarding the legality of the manner in which informed consent had been obtained in particular, or a violation of the law in general.¹³⁴
- [53]. The nationwide monitoring exercise performed by the Bulgarian Helsinki Committee in 2005 found that individual plans that combine medication with other therapeutic approaches and are prescribed by a multidisciplinary psychiatric team¹³⁵ are still a matter of wishful thinking. Medication is the essence of treatment¹³⁶ and shortages of qualified personnel, lack of funds and inadequate equipment and technical facilities are the main characteristics of mental health hospitals. The *Национална здравно-осигурителна каса* [National Health

<http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). There are several reasons for this: the patients are told that if they do not sign the declaration of informed consent, a judicial procedure for involuntary placement will be instituted against them and that ‘this is the system in the hospital’; in other cases, patients who are disoriented sign the declaration without being able to read and understand it. In any case, the information received by the patients was quite scarce or incomprehensible.

¹²⁸ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 89, para.2.

¹²⁹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 89, para.3.

¹³⁰ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 87, para.2 and 3.

¹³¹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 87, para.4.

¹³² *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p. 24, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹³³ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 162, para.3. However, according to *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.25, ‘...the municipal officials assigned to express informed consent usually do not know and never come to know the patients; they never request information about the medical details, the condition and the treatment.’

¹³⁴ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 93.

¹³⁵ Rules of the ‘Psychiatry’ Medical Standard, enforced by Ordinance No. 24 of 7.07.2004 on the Enforcement of the ‘Psychiatry’ Medical Standard.

¹³⁶ Regarding medication the BHC found that between 30 and 60 types of medications and forms are used in psychiatric establishments. A general analysis of the various practices involved a comparison of the ratio of ampoule dosage forms of Chlorazin and Haloperidol used in 2004 to all dosage forms. The estimated quotient varies between 10 and 500. This estimation merely points to the fact that some establishments use the stated dosage forms ten times more than others. Correctives are prescribed if patients have manifest extrapyramidal symptoms. During the BHC visits, there were quite a number of patients exhibiting typical signs such as tremor, rigidity, bradykinesia, and akathisia.

Insurance Fund (NHIF)] does not finance institutional psychiatric care directly but exerts influence on the therapy and diagnosis of patients.¹³⁷

- [54]. Involuntary treatment of offenders who lack criminal responsibility is regulated by Article 89 of the *Наказателен кодекс* [Criminal Code (CC)]¹³⁸, whereas the procedure for its implementation is provided in the *Наказателно-процесуален кодекс* [Criminal Procedural Code (CPC)].¹³⁹
- [55]. Under Article 89 of the Criminal Code, when a person who has committed an act dangerous to society in a state of legal insanity, or who has fallen into such a state before the pronouncement of the sentence or in the course of serving the punishment, the court may rule for the person's surrender to the guardianship of his/her next-of-kin, provided that the latter assumes the obligation for the patient's care and treatment. Alternatively, the court may order involuntary treatment at an ordinary psycho-neurological facility, a special psychiatric hospital, or a special ward in an ordinary psycho-neurological establishment. A proposal for such treatment may be made by the regional or district prosecutor. Prior to this, the prosecutor is obliged to arrange a medical examination and to order an investigator to clarify whether the person presents a danger to society. Under this procedure a defence lawyer must participate in court proceedings. In other words, if the person does not hire a lawyer, the court must appoint one. Six months following the beginning of treatment, the court makes a pronouncement on the continuation, replacement, or termination of the involuntary treatment.
- [56]. Almost all hospitals visited carried out placement in line with the procedure, but they were, rather, of singular incidence. The psychiatrists firmly held that only two hospitals in Bulgaria correspond to the term 'specialised psychiatric hospital' under Article 89c of the CC. But the human rights monitoring exercise¹⁴⁰ showed that the choice of a psychiatric hospital for serving compulsory and involuntary treatment is made depending on the degree of threat to the public presented by the patient. It is therefore probable that patients committed under Article 89c of the CC were considered by the court to be a greater threat to the public.¹⁴¹
- [57]. The legal framework for involuntary placement and treatment aims to treat the mental disorder and protect the disabled person and other people who might suffer the consequences of his/her psychotic behaviour. The legal framework in Bulgaria does not stipulate adequate aftercare following involuntary placement or treatment nor does it provide for special rules regarding involuntary placement and treatment of children.

¹³⁷ Outpatient psychiatric care would be impossible for most patients without the reimbursement of psycho-pharmaceutical medications by the NHIF and without the fees paid to psychiatrists who sign a contract with the NHIF. However, only certain medications and diagnoses are eligible for financial support. This means that double diagnoses are widespread.

¹³⁸ Bulgaria/ *Наказателен кодекс* [Criminal Code] (1.05.1968), Art. 89.

¹³⁹ Bulgaria/*Наказателно-процесуален кодекс* [Criminal Procedure Code] (29.04.2006).

¹⁴⁰ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.18, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁴¹ Thus for instance in one of the specialised hospitals the files of patients lacking criminal responsibility placed in the closed ward showed that the reason for their placement was commission of a crime in a condition of legal insanity due to a mental illness. More than 90% of the patients placed in the ward had committed homicidal acts and the remaining 10 % were detained for sexual abuse, theft and robbery, usually performed against their relatives.

Treatment of mentally ill prisoners

- [58]. The involuntary treatment of persons with mental disabilities sentenced to imprisonment is carried out at a single psychiatric hospital in Bulgaria while the prisoner is serving his/her sentence. A report from this hospital filed to the Ministry of Justice shows that prisons still apply the unsatisfactory practice of referring prisoners for inpatient treatment almost exclusively on social or regime grounds, as well as patients with predominantly somatic disorders. Besides, since the beginning of 2004, health units in most prisons do not have permanent qualified psychiatric staff. The use of external doctors – who are not familiar with the specifics of either the environment nor the patients themselves – has resulted in ‘diagnoses that barely correspond to the patients’ actual state.’ The set of documents submitted upon the prisoners’ arrival in the hospital can vary in volume and sometimes contains no information about any preceding illnesses nor the reason for placing him/her in the ward. Usually, the imprisoned person arrives with a referral and medical report by the psychiatrist from the medical centre in the respective prison. Patients are not asked for their informed consent in prison and, therefore there is usually at least one patient per month who refuses to be treated and whose behaviour is not psychotic but resistant. The prison administration handles problems generated by such prisoners by referring them for involuntary treatment.

5.2. Criteria and Definitions

- [59]. Under the Health Act, people who are likely to commit a crime that constitutes a danger to their relatives, to others or to the public or who seriously threaten their own health due to their illness, are subject to committal to inpatient psychiatric facilities.¹⁴² The Act requires that the probability of a mentally ill person committing a crime due to his/her illness is proven, which significantly limits the scope of actions that can serve as grounds for committal for compulsory treatment. The prosecution therefore has to prove before the court not only the actual dangerous behaviour of the person due to his/her illness (which was one of the options provided by Art.36, para.3 of the repealed Public Health Act)¹⁴³ but also the probability of committing a crime. This, of course, is conducive to the survival of highly unsatisfactory court practice that hardly corresponded to legal provisions in the past as well. However, at present courts tend to place individuals who present a danger to their own health or to others without proving the probability that they will commit a crime. On the other hand, the new Act omits the provision allowing compulsory inpatient treatment as a protective measure for the ill individual where the sole ground for his/her placement/detention is the risk that s/he will commit a crime.

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Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 146, para.1, 1 and 2: ‘Persons with mental illnesses who need special health care are as follows: 1. mentally ill with established serious disorder of the mental functions (psychosis or serious personality disorder) or with expressed durable mental damage as result of mental disease; 2. person with moderate, severe or profound mental retardation or vascular and senile dementia; 3. persons with other disorders of the mental functions, difficulties in education and troubles in adaptation, requiring medical help, care and support, in order to live adequately in family and in social environment.’

¹⁴³ Bulgaria/*Закон за народното здраве* [Public Health Act], (enforced 1.01.1974) Art.36, para.3 (amended in 1991, 1997 and 1999) ‘Mentally ill patients shall be admitted for compulsory treatment in a state or municipal treatment facility under a judicial decree when they suffer from schizophrenia, paranoia, cyclophrenia, epilepsy, senility, presenility, traumatic, vascular and organic mental disorders, infectious, somatogenic, psychogenic and intoxication psychoses, oligophrenia and severe psychopathy and due to their illness, are likely to perpetrate crimes constituting a serious danger to society or which are dangerous to their relatives or others, or seriously threaten their own health.’

- [60]. However, the 'Psychiatry' Medical Standard¹⁴⁴ considerably assists in the practical evaluation of the risk and dangerous behaviour of an individual with a certified mental illness by giving a definition of 'high-risk behaviour' – 'behaviour that is motivated by an illness and can constitute a danger to the patient or others.'¹⁴⁵ According to the Standard, risk levels are defined as high, medium and low. Four factors are evaluated to assess risk level – psychopathological stimuli, changes in reactivity and behaviour due to a personality change, premorbid personality features and factors pertaining to the micro- and macro-social environment. The Standard states explicitly that 'personality changes are closely linked to the risk of performing acts that threaten the public due to the patient's impulsive decisions and actions as well as to his/her ethical deformation that entails nonconformity to moral and legal rules.' The 'Psychiatry' Medical Standard lays emphasis on the problem of assessing the probability of committing a crime by a person diagnosed with a mental illness under paragraph 1 of Article 146 of the HA by stressing that 'the assessment of potential threat to the public (dealt with by the HA) is only probable and may often be erroneous.' The Standard sets out a clear scale for evaluating whether emergency compulsory hospitalisation is required when there is 'aggressive or auto-aggressive behaviour, psychomotor agitation, disorientation, mental derangement.' When the sum of all points in the risk-assessment scale comes to 35 or more, this is taken as an indication that the risk of dangerous acts is high and the patient is subject to emergency hospitalisation. Points that total between 20 and 34 are interpreted as a medium risk and a proposal for compulsory/involuntary treatment is suggested. Points below 20 indicate the need to provide treatment without compulsion, with the cooperation of the relatives of the patient.
- [61]. The purpose of risk assessment in the course of court proceedings for compulsory inpatient treatment is to justify a person's detention in a psychiatric facility. However, when reviewing requests made under paragraph 2 of Article 154 of the HA filed by heads of psychiatric facilities for treatment to be extended by another 48 hours after the patient's condition has been stabilised, the BHC team found no records of risk assessment results to justify compulsory hospitalisation. The BHC found no risk assessment data in most of the expert medical reports produced in the course of court proceedings for compulsory treatment.¹⁴⁶
- [62]. The Bulgarian Health Act does not suggest any less intrusive alternatives which should be considered before ordering involuntary placement or involuntary treatment.

¹⁴⁴ Bulgaria/ *Наредба 24 от 07.07.2004 за приемане на медицински стандарт 'Психиатрия'* [Ordinance № 24 of 7.07.2004 for the adoption of the 'Psychiatry' Medical Standard, issued by the Minister of Health], (7.09.2004), referred to the 'Psychiatry' Medical Standard. The medical standard provides for the rules and procedures that need to be obeyed in order to implement the law and respect the human rights of the patients.

¹⁴⁵ According to the text 'the patient presents danger to him/herself when there is a risk of committing suicide or self-injury, s/he is unable to meet his/her basic survival needs without external supervision or assistance, and can cause considerable material damage.' The patient presents a danger to others when s/he 'threatens or injures the personality or violates the rights of citizens, or threatens property or the rule of law in the Republic of Bulgaria as established by the Constitution, or other interests protected by law.'

¹⁴⁶ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.7, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

5.3. Assessment, Decision Procedures and Duration

Procedure for compulsory placement

- [63]. The Health Act provides for two options for initiating the committal of mentally ill persons. Under the first, a prosecutor who has been informed about a person's psychotic behaviour opens the procedure: it emerges from a police investigation that the person's criminal behaviour is probably owing to a mental condition. Under the second option, a person with a mental illness has already been placed at a health facility and the head of the respective facility can initiate a procedure for his/her committal. Research in 2005 showed that patients undergoing compulsory inpatient treatment were predominantly committed upon proposals by the heads of the psychiatric facilities where they had already been placed. A probable explanation here is that the second option is quicker and effective in view of the circumstances that call for compulsory hospitalisation of a psychiatric patient.
- [64]. Regardless of the way it has been initiated, the committal procedure is closed with a decision of the district court in the area where the patient lives or where the establishment where he has been placed is located.¹⁴⁷ In the event that the Prosecution Service has requested the committal, the court has to send copies of the committal request to the person concerned, whereby the person can file objections and provide evidence within seven days.¹⁴⁸ This provision is not applied when the person is already placed at a psychiatric facility and the head of the facility has initiated the committal request. Then the person is informed about the request and provided with other evidence in the court hearing, while the head of the health facility has to ensure that the person appears before the court.¹⁴⁹ In this case, the court hearing is scheduled immediately.
- [65]. Under the Health Act, when a decision for compulsory treatment of a patient committed in an emergency has to be made, the head of the respective hospital immediately issues a justified request to that end which is accompanied by a medical examination report about the person's mental state drawn up by a psychiatrist.¹⁵⁰ The Act does not stipulate a particular form or requirements for the request. The typical text of such a request would include the three names of the patient (first name, patronymic and family name), date and hour of admittance to the hospital and the reasons for the patient's emergency hospitalisation.¹⁵¹ While interviewing patients who were committed to hospitals as emergency cases under the above procedure, the BHC identified no cases where the patients were informed about the committal request in a court hearing. In addition, they often stated that they felt uneasy during the hearing and were not aware of its purpose.¹⁵²

¹⁴⁷ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 156, para.1.

¹⁴⁸ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.158, para. 1.

¹⁴⁹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.158, para.3.

¹⁵⁰ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.154, para.3.

¹⁵¹ Here is an example of such a request: 'I propose that the person (three names, personal identity number, address), placed in..... as an emergency case, be committed for compulsory treatment by virtue of Art.158, para. 3 of the HA. Extension of the period of detention under Art.154, para 2 of the HA of the same person has been requested.' The proposal is accompanied by a medical opinion, again in a special form, filled out by a psychiatrist. The form reads as follows: 'I examined the person..... (three names, personal identity number, address) and identified the following: diagnosis..... The person's behaviour constitutes a danger to him/herself and to others, and therefore calls for treatment provided within an inpatient psychiatric facility'.

¹⁵² *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.10, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

- [66]. The purpose of the first hearing in committal cases is to verify the existence of a mental condition under Article 146 of the Health Act and to ensure the probability that the patient could commit a crime that constitutes a danger to the person, to relatives, to others or to the public, or poses a threat to the person's own health.¹⁵³ These circumstances are ascertained by questioning the person, the psychiatrist who makes a statement about the mental state of the person, and witnesses when available. In the case that the above circumstances are present, the court orders a mandatory forensic psychiatric examination.
- [67]. Research in 2005 concluded that the courts in Bulgaria hear the person to be placed under compulsory placement only if he/she has been placed at a psychiatric facility as an emergency case. On the other hand, it turned out that it is common for people to be summoned to the first hearing but not appear before the court and their cases to be deferred; afterwards it is impossible to bring such people to court by compulsion because they do not reside at their permanent address.¹⁵⁴ However, the mental condition of these persons in the first hearing and the degree to which the court succeeds in taking into consideration their opinion deserve special attention. Regrettably, few of the patients interviewed by the BHC could remember and were able to give their impressions of the first court hearing. The general impression is that patients perceive the proceedings as sentencing and their attitude from the onset is that no matter how they intervene in the course of the hearing, the court will take into consideration primarily the opinions of the psychiatrist and the prosecutor who take part in the hearing.¹⁵⁵ Some patients and medical staff reported that the person whose committal was under consideration was not present in the second court hearing, which is often also the last. This fact is not reflected in court decision and cannot be consistently verified through the records of inpatient facilities. The first-instance court decision may be appealed, but even when patients are present in the second (last) court hearing, they are often in a condition that does not allow them to understand the right to appeal, and even less to benefit from it.

Psychiatrist participation in court hearings on compulsory placement

- [68]. The Health Act explicitly requires a psychiatrist to be present at the hearing when compulsory placement of a person with a mental disorder or intellectual disability is being decided.¹⁵⁶ In practice the presence of a psychiatrist is always ensured.¹⁵⁷ It is not always possible to identify how the respective psychiatrist was appointed to appear in court and the law does not prescribe a mechanism for this.¹⁵⁸ In some cases, psychiatrists link the probable presence of a mental illness to the medical signs and symptoms of the person considered for committal, while in others, they directly relate the presence of a chronic mental illness diagnosed in the past to the danger of committing a crime. Actually, only some psychiatrists taking part in these hearings are aware of the fact that their role is limited

¹⁵³ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.159, para. 1.

¹⁵⁴ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.10, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁵⁵ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.10, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁵⁶ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.158, para.4.

¹⁵⁷ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.11, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁵⁸ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.11, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). 'In most cases of emergency admission, the appointed psychiatrist is either the attending psychiatrist or a colleague from the same ward. In some health establishments the physician who advises the court performs the medical examination report afterwards, while in others the practice is to have two different physicians for these purposes for financial reasons, i.e. to evenly distribute the additional remuneration for medical examinations among the physicians at the respective establishment. Heads of hospitals also seem to take part in first hearings.'

to identifying ‘the probable presence of a mental illness’¹⁵⁹ and not to determine any danger ensuing from the illness.

- [69]. At the end of the first hearing, after it has been verified that the person probably suffers from a mental disorder which presents a danger to the person and to others, relatives and the public, the court orders a medical examination and determines what type it should be (inpatient or outpatient),¹⁶⁰ the health establishment and the expert to perform it, as well as the time limit for its completion (which cannot exceed 14 days) and schedules the next hearing of the case, which takes place not later than 48 hours after the completion of the medical examination.¹⁶¹ Practice shows that the court almost invariably with orders the type of medical examination proposed by the psychiatrist. The procedure for appointing the expert varies in different courts. In the *Софийски районен съд* [Sofia District Court] experts are appointed from a list. Other courts appoint as experts the psychiatrists who were present in the first court hearing and advised the court about the type of the medical examination. If the psychiatrist refuses in the first hearing to perform the medical examination, another psychiatrist is appointed instead.

Decisions on placement and termination of compulsory treatment

- [70]. Under the Health Act¹⁶² the district court decides on compulsory placement and treatment. The same court decides on the termination of the compulsory placement/treatment.¹⁶³ The placement can also be terminated at the end of the term for which it was imposed. Under the Health Act, compulsory inpatient treatment ends on the expiry of the term established by the court decision or on a decision issued by the district court for the health establishment’s area.¹⁶⁴ Upon expiry of the term established with the court decision the patient must be released.¹⁶⁵ Every three months the district court for the facility’s area is obliged to pronounce her to terminate or extend the committal and compulsory treatment based on a forensic psychiatric examination report presented by the health facility. When the grounds for compulsory inpatient treatment cease to exist before the specified term expires, the committal can be discontinued upon request by the patient, the prosecutor or the head of the health establishment.¹⁶⁶
- [71]. In 2005 the BHC came across many cases in which people were unlawfully detained for compulsory treatment after the expiry of the prescribed term. In many cases the attending physicians persuaded patients to sign a consent form for voluntary treatment after the expiry of the prescribed term for purely social reasons (for patients to be placed in a home or to continue a course of the treatment that would otherwise be terminated because of the lack of a supportive environment outside the hospital).¹⁶⁷

¹⁵⁹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.159, para. 1.

¹⁶⁰ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.159, para.1.

¹⁶¹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.159, para.2.

¹⁶² Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.156.

¹⁶³ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.164.

¹⁶⁴ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.164, para.1.

¹⁶⁵ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p. 16, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). However, in 2005 the majority of the psychiatrists were of the opinion that patients committed for compulsory treatment cannot be released without a court order. In practice, about two weeks before the expiry of the term, i.e. when the patient was due to be discharged from the hospital, the psychiatrists prepared a medical examination report and submitted it to the court. The patient was discharged only after the court ordered him/her to be released.

¹⁶⁶ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.164, para.3.

¹⁶⁷ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.17, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

- [72]. When a voluntary placement becomes involuntary, the court procedure under the Health Act again applies.
- [73]. The time limits for the submission of the medical examination report are seven or 14 days.¹⁶⁸ Regarding the rules for performing a medical examination, the Health Act refers to an ordinance issued by the Minister of Health and the Minister of Justice;¹⁶⁹ the Act also stipulates that no treatment is to be administered prior to the completion of the medical examination except in an emergency or after obtaining informed consent from the person,¹⁷⁰ and also that along with the medical examination report the expert is to express an opinion about the person's ability to give informed consent for treatment, to propose a treatment for their specific illness and recommend health institutions where the proposed treatment can be administered.¹⁷¹

Examination by an expert and appointment of medical staff performing examinations

- [74]. On 13.05.2005 the Minister of Health and Minister of Justice issued an *Наредба за провеждане на съдебно-психиатрична експертиза при задължително лечение* [Ordinance for the performance of forensic psychiatric examinations for compulsory treatment].¹⁷² The Ordinance states that the main purpose of such an examination is to establish either the appropriacy of committal and compulsory treatment of a person needing special care, or the appropriacy of terminating or extending the committal and compulsory treatment. Only medical professionals with a recognised qualification in psychiatry are considered qualified to perform the examination, the only exception being localities with no such specialist and where a medical professional with not less than two years of service at an inpatient psychiatric facility can be appointed as expert.¹⁷³ The forensic psychiatric examination for the committal and compulsory treatment of minors is performed in the presence of a psychologist.
- [75]. The respective health facility performs a quarterly forensic psychiatric examination, and the district court pronounces on termination or extension of the treatment on the basis of the examination report.¹⁷⁴ The forensic psychiatric examination report is in writing and consists of an introduction, data from the psychiatric examination, a medical discussion and a conclusion.¹⁷⁵
- [76]. However, the newly introduced requirement to assess the ability of the patient to give informed consent clearly was difficult to understand for most psychiatrists.¹⁷⁶ The

¹⁶⁸ Bulgaria/Закон за здравето [Health Act] (01.01.2005), Art.159, para.2.

¹⁶⁹ Bulgaria/Закон за здравето [Health Act] (01.01.2005), Art.160, para.1.

¹⁷⁰ Bulgaria/Закон за здравето [Health Act] (01.01.2005), Art.160, para.2.

¹⁷¹ Bulgaria/Закон за здравето [Health Act] (01.01.2005), Art.160, para.3.

¹⁷² Bulgaria/Наредба 16 от 13.05.2005 за съдебно-психиатричната експертиза на лица с психични разстройства за настаняване на задължително лечение в лечебни заведения [Ordinance 16 of 13.05.2005 on Forensic Psychiatric Examinations of Persons with Mental Illnesses for Committal to Health Institutions for Compulsory Treatment], (31.05.2005), referred to as Ordinance 16.

¹⁷³ Bulgaria/Ordinance No. 16, Art.5.

¹⁷⁴ Bulgaria/Ordinance No. 16, Art.8.

¹⁷⁵ Bulgaria/Ordinance No. 16, Art.14, para 3 : 'Data from the psychiatric examination shall include: information regarding patient history and sources of that information; information from all documents collected additionally, especially about the person's health condition; results from the overall physical, neurological and mental examination, from laboratory tests and measurements and from consultations with other specialists; information about the behaviour of the person during the examination; data on the treatment administered, if applicable.'

[2].¹⁷⁶ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.13, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). In some hospitals most assessments found that patients were unable to give informed consent and their relatives or local officials were usually entitled to give such consent on their behalf. In one hospital all patients were considered able to give informed consent for treatment. The examination reports reviewed by the

requirement that the expert performing the examination provide an opinion about the patient's ability to give informed consent was observed. Although it was not clear how these assessments were made, the Bulgarian Helsinki Committee monitoring exercise came across various opinions given by psychiatrists from different hospitals under similar circumstances and in similar cases, often in violation of the law.

- [77]. Usually after the completion of the forensic psychiatric examination report the second hearing on the committal case takes place either immediately or within 48 hours of receipt of the examination report. When the parties are summoned in accordance with procedure, committal cases are completed in the course of two court hearings. In the second and last hearing, the court hears the person's opinion about the findings of the forensic psychiatric examination and pronounces its decision on the case on the basis of the evidence collected.¹⁷⁷ The content of the examination report is not presented to the participants during hearings and they are expected to have acquainted themselves with it in advance.¹⁷⁸ In consequence the patient and often the defence learn about it during the hearing and hear only the conclusion. After that both the defence and the prosecutor plead that compulsory treatment of the patient is necessary 'in the patient's interest'. The text of court decisions reiterate only the conclusions of the examination reports and some of the person's more flagrant actions that have led to his/her hospitalisation. All the court decisions reviewed by the researchers of the Bulgarian Helsinki Committee complied with the treatment proposed in the examination report.
- [78]. The court rules on the necessity for committal to an inpatient facility, determines where it should take place and decides on the person's ability or inability to give informed consent. It also sets the term of placement and treatment, as well as the type of treatment (outpatient or inpatient).¹⁷⁹ Most court decisions for compulsory treatment are based on actions threatening the public or the probability of such actions and rarely on behaviour that poses a possible threat to the patient's own well-being. Apart from the legal provisions and the practice of other courts, some courts take into consideration social and medical criteria when deciding on committal.¹⁸⁰
- [79]. The enforced placement order and the court decision to appoint a forensic psychiatric examination are implemented by the respective health facilities with the assistance of law enforcement agencies if necessary.¹⁸¹ In 2005 a human rights monitoring exercise found

BHC showed that experts quite often inferred that patients were unable to give informed consent from patients' reluctance to give it, i.e. 'the patient refuses to give informed consent, therefore the patient is unable to give informed consent.' The BHC finds this practice unsatisfactory and unlawful.

¹⁷⁷ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.162, para.1.

¹⁷⁸ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.14, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). 'Interviews with patients showed that some of them were not present at the second hearing and were not informed about the content of the examination report, the court decision and the opportunity to appeal the decision if they disagreed with it. However, even patients who were present at the hearings, including ones monitored by the BHC, were in a state that prevented them from understanding and intervening. They did not perceive their legal representative as their defence and often they did not communicate. The comments and responses of the persons whose committal was under consideration were discarded and in some of the hearings the judges were openly patronising or hostile to the patients.'

¹⁷⁹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.162, para.2.

¹⁸⁰ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p. 17, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). 'The social criterion meant only that the person had no place to live because the relatives refused to live with the person due to his/her aggressive behavior, or the person was unable to take care of his/her basic needs because s/he had no relatives. Some medical examination reports and court decisions for placement or extension of compulsory treatment stated that even though the medical criteria were met and the patient was willing to leave the hospital, the treatment was extended because the social criteria were not met (lack of place to live, unemployment, etc).'

¹⁸¹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.165, para.2.

many cases in which persons were unlawfully detained for compulsory treatment after the expiry of the prescribed term.¹⁸²

Emergency situations

- [80]. According to the Health Act emergency psychiatric care is a combination of medical rules and interventions performed upon individuals with clear signs of a mental disorder when their behaviour or condition presents direct and immediate danger to their own health or life or that of others. Under the 'Psychiatry' Medical Standard psychiatric patients are referred for emergency hospitalisation by a certified psychiatrist after a high level of risk has been identified. Placement in an inpatient psychiatric facility is performed by specialist emergency teams or by centres for emergency and urgent medical care (CEMC). If necessary, they seek assistance from law enforcement agencies. Within 24 hours of the emergency placement of a psychiatric patient in a psychiatric ward without his/her consent the head of the healthcare facility calls a clinical meeting to assess the patient's condition and determine treatment, and informs the court/prosecution service by means of a medical report. The report includes a detailed description of the patient's symptoms and the related risk for him or others. It also includes an opinion on the need to institute a procedure for compulsory/involuntary treatment. The medical report has to be filed with the court/prosecution service by a special courier who immediately has to obtain an immediate response
- [81]. Monitoring found no evidence that inpatient facilities implemented the above-mentioned legislation.¹⁸³ All hospitals reported emergency cases where patients were transported to the psychiatric facility by police officers, often accompanied by a team from a centre for emergency medical care or by a medical professional. Once the patient's condition has been stabilised, s/he usually signs a consent form for voluntary treatment (in 50 to 80% of cases). This often takes place within the first 24 hours of their stay at the facility, but there are cases when it takes seven or more days to persuade a patient to sign a consent form. Within this period the compulsory treatment procedure is not initiated and his/her consent is waited for upon request by the patient's relatives. Some hospitals do not practice emergency admittance. Instead, emergency patients are admitted to the local municipal mental health facilities that initiate committal procedure and transfers the patients to the nearest hospital within days. This practice is detrimental to the process of informing the patient of his/her rights and to the subsequent actions of the court.
- [82]. The maximum duration of an initial placement is three months and the court is obliged to extend that period if necessary with a new decision after taking into account a medical examination report.

Mental health care interventions

- [83]. Instruction No. 5 of 1975 on the implementation of methods for diagnosis and treatment which lead to a temporary change in consciousness the following lists the following methods: 'biological shock methods with the use of electric shock, insulin, cardiasol and other medicines; hypnoses, narcoses'.¹⁸⁴ Electroconvulsive therapy has been practiced in

¹⁸² *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.17, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁸³ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.7, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁸⁴ Bulgaria/*Инструкция №5 за прилагане на методи за диагностика и лечение, които водят до временна промяна на съзнанието* [Instruction No. 5 of 1975 on the implementation of methods for diagnosis and treatment which lead to a temporary change in consciousness, issued by the Ministry of Health] (1975).

Bulgaria since the late 1940s and is still practiced in many psychiatric establishments. A study in 2001 found that the administration of ECT has been discontinued in several hospitals since 1995-1996 because of their location and the difficulties, including financial, in securing anaesthesiologists for the procedure. The survey¹⁸⁵ indicated that unmodified ECT continues to be administered in many psychiatric clinics in Bulgaria.¹⁸⁶

- [84]. The administration of ECT in unmodified form is not legally prohibited in Bulgaria. On the contrary, the Instruction of the Ministry of Health on Electroconvulsive Therapy for Mental Diseases of 1952,¹⁸⁷ still the law that regulates the procedure, does not require anaesthetic or muscle relaxants. Not only that, but the procedures prescribed in the Instruction conform completely to the use of ECT in unmodified form. The 1975 Instruction introduces the stipulation that consent must be given in advance by the patient or his/her legal guardian if the patient is legally incompetent.¹⁸⁸

Coercive measures

- [85]. The legislation which provides for coercive measures consists of the 'Psychiatry' Medical Standard outlining the conditions for supervision of coercive measures and provides a general description of actions that staff may take to manage patients' agitation;¹⁸⁹ The Health Act¹⁹⁰ and *Наредба 1 от 28 юни 2005 г. за реда за прилагане на мерки за временно физическо ограничаване при пациенти с установени психични разстройства* [Ordinance 1 on the Procedure for the Implementation of Measures for Temporary Physical Restraint of Patients Diagnosed with Mental Disorders (28.06.2005)] furnish a detailed definition of the measures themselves and specify the manner and time for which they should be used, the circumstances calling for such measures and maintenance of the required documentation. According to the Health Act measures of physical restraint should not be imposed for over six hours. Ordinance 1 further specifies that seclusion cannot exceed six hours, and physical restraint – two hours. A human rights monitoring exercise in 2005 found that according to the records, patients were physically restrained for considerably longer than two hours both before and after the entry into force of Ordinance

¹⁸⁵ *Inpatient Psychiatric Care and human rights in Bulgaria*, Bulgarian Helsinki Committee, 2001, <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=79#4> (last accessed on 06.11.2009).

¹⁸⁶ Georgi Onchev, Spridon Alexiev, 'Psychiatric Practice in Bulgaria: results of a national survey among professionals', BPA bulletin, No. 4/2000 (in Bulgarian). The survey covered 23% of practising psychiatrists in Bulgaria, but is not representative of the group. According to a recent survey by the Bulgarian Psychiatric Association, nearly 20% of psychiatrists polled prescribe ECT without anaesthetic or muscle relaxants.

¹⁸⁷ Bulgaria/ *Инструкция за електроконвулсивна терапия на душевните болести* [Instruction of the Ministry of Health on Electroconvulsive Therapy for Mental Diseases] (1952).

¹⁸⁸ Bulgaria/*Инструкция №5 за прилагане на методи за диагностика и лечение, които водят до временна промяна на съзнанието* [Instruction No. 5 of 1975 on the implementation of methods for diagnosis and treatment which lead to a temporary change in consciousness, issued by the Ministry of Health] (1975), Art. 2.

¹⁸⁹ The Standard stipulates that patients' agitation should be managed by four staff members (one for each limb), where necessary. Restraint must be ordered by a doctor and monitored every 30 minutes, and a written report is mandatory in accordance with the procedures stipulated for keeping records of physical restraint (Art. 3, para.2, item 1.d).

¹⁹⁰ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art. 150, para.1 'Measures of temporary physical restraint may be applied to patients with established mental disorders, who have entered into a state representing a direct and immediate danger to their own health or life or to the health and the life of other persons. (2) The measures specified in paragraph 1 shall be applied only as a prerequisite for creating conditions for conducting treatment and they do not replace active treatment. (3) Measures for physical restraint shall be ordered by a doctor, who defines the type of measure and the period for which it is to be applied. This period cannot exceed six hours. (4) The measures specified in paragraph 1 shall be implemented by staff trained for this in advance. (5) The type of measures undertaken for physical restraint, the reasons for imposing them, the period for which they are applied, the name of the doctor who ordered them and the medical treatment administered shall be entered into a special book kept by the medical establishment and into the patient's case record. (6) A person who has been physically restrained must be under constant observation by a doctor or nurse. (7) An order to apply measures of physical restraint shall be issued in accordance with the ordinance of the Minister of Health together with the Minister of Justice.'

No. 1.¹⁹¹ The BHC also concluded that the lack of separate premises for seclusion and restraint, the unnecessarily lengthy description of each measure undertaken, lack of staff to supervise patients placed under restraint, as well as the requirement for temporary restraint to be carried out by no less than four persons from the medical team, at least one of them of the same sex as the patient, are the major problems associated with the actual implementation of the new Ordinance.¹⁹² The law does not prescribe a maximum term for placement in high-security units and only three hospitals have these. Patients may be assigned to these units depending on the risk of aggressive, self-aggressive or unpredictable behaviour. The Standard provides for reporting aggressive outbreaks in the patient's clinical case history, nurses' reports, the intensive monitoring and supervision chart, the temperature record, etc. After initial recording, aggressiveness must in theory be monitored throughout the patient's stay, keeping a record of developments, but this does not happen in practice.¹⁹³

- [86]. Temporary restraint is often performed in wards in front of and among other patients. Monitoring of patients during restraint must be more intensive than during seclusion. According to paragraph 3 of Article 11 of Ordinance 1, a nurse has to keep vigil by the bed of the restrained patient and physical restraint must be performed with straps or strait jackets. The Ordinance explicitly bans the use of chains, handcuffs and other sharp and dangerous tools. The grounds for imposing physical restraint are the need to prevent a direct and immediate threat to the patient's own health or life or the health or life of others. A monitoring exercise in 2005 found that restraint measures were imposed both to punish patients and to maintain peace and order in the wards.¹⁹⁴ In not one of the inpatient facilities visited did the human rights monitoring exercise find consistent documentation of use of physical restraint.¹⁹⁵
- [87]. The other physical restraint measure is temporary seclusion (isolation) of patients in separate premises. In some inpatient facilities seclusion was enforced only at night, while the patients could move without restrictions within the ward during the day. Seclusion was not recorded in the manner prescribed by Ordinance No. 1 in any case.¹⁹⁶

Reviews and appeals concerning the lawfulness of involuntary placement and/or involuntary treatment

¹⁹¹ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.31, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁹² *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.29, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁹³ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.29, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁹⁴ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.30, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁹⁵ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.30, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). Pursuant to paragraph 3 of Ordinance No. 1, the doctor enters nine indicators into the patient's clinical case history with regard to physical restraint – the temporary condition of the patient, the circumstances calling for the use of such a measure, its type and time of duration, names of the staff members enforcing the measure, names of the monitoring nurses, medications prescribed, changes in the patient's condition, alternations in medical therapy, date, time, name and signature.

¹⁹⁶ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.30, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009). The isolation of patients was perceived as placement in separate premises, rather than as a measure of physical restraint, and in some cases, as the staff put it, patients unable to communicate with other patients without getting into a fight were accommodated in the isolation unit at their own request. Ordinance No. 1 provides no specific requirements regarding the premises for temporary seclusion and makes a cross-reference to the 'Psychiatry' Standard, where these premises are described as being part of high-security units.

- [88]. NGO research in 2005 found that patients on involuntary placement were rarely aware of and understood their status at the hospital and their associated rights and obligations.¹⁹⁷ They explained that even though they were placed for voluntary treatment, the psychiatrists persuaded them to stay in the hospital for at least three months, just as they did with committed patients. The psychiatrists explained that the course of the patients' treatment required that period of time to achieve better results. Patients who were aware of the option to appeal the committal order and who had intended to do so encountered various obstacles – no access to a copy of the first instance decision, no access to writing materials, lack of stamps, etc. In many hospitals the Bulgarian Helsinki Committee met patients who had not understood about the right to appeal the first instance court decision during the last hearing of their case – the first instance court's decision may be appealed at any time after it is handed down. Even when patients are unable to appeal the initial decision due to their absence from the second hearing, they should be informed about the court decision in writing. However, researchers could not establish whether patients were informed of the content of the decision. It is more probable that they were not informed at all or only formally.¹⁹⁸ Some patients indicated that when they asked about the possibility of appealing their psychiatrists dissuaded them by saying that the appeal would extend their stay and that it was in their interest not to appeal. That is probably why there are only isolated cases of appeal of court committal orders. Unfortunately, the outcome of only one such case is known – the patient was released from the hospital.
- [89]. The implementation of a committal order is suspended if it is appealed unless the first instance or appellate court rules otherwise.¹⁹⁹ The majority of court decisions examined noted suspension of implementation during appeal proceedings, but the emergency patients and the patients whose committal procedure was under way were detained in the hospital during the appeal period too.²⁰⁰

Court-appointed legal counsel

- [90]. The Health Act explicitly requires a defence counsel to be appointed to the person with mental disorder or intellectual disability whose compulsory placement and treatment are being decided,²⁰¹ and a human rights monitoring exercise in 2005 found that the court always does so.²⁰² However, counsels do not present any arguments in defence of their clients and their participation in the hearing often comes down to accepting the conclusions of the forensic psychiatric examination. Often they express opinions that clearly contradict that of their client and sometimes that of the prosecutor. Absurd situations like this raise serious concern about the quality of the defence appointed in court cases. Defence counsels who usually take part in committal cases have to undergo special training and accreditation relevant to their defence obligations.

¹⁹⁷ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.15, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

¹⁹⁸ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.163, para.1. The decision of the court can be appealed by interested persons within a term of seven days after it has been issued. The regional court shall pronounce its decision within a term of seven days, and this decision shall not be subject to appeal.

¹⁹⁹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.163, para.2.

²⁰⁰ *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.16, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

²⁰¹ Bulgaria/*Закон за здравето* [Health Act] (01.01.2005), Art.158, para. 4.

²⁰² *Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005*, Bulgarian Helsinki Committee, December 2005, p.11, available in English at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=370> (last accessed on 06.11.2009).

6. Competence, Capacity and Guardianship

- [91]. The only legal framework in Bulgaria providing for the management of the affairs of persons with mental disorders and intellectual disabilities is guardianship.²⁰³ Substantive guardianship law is set out in the *Закон за лицата и семейството* [Individuals and Family Act, IFA]²⁰⁴ and the *Семеен кодекс* [Family Code].²⁰⁵ Procedural issues are regulated by the *Граждански процесуален кодекс* [Civil Procedure Code].²⁰⁶ The legal frameworks for incapacitation and guardianship have remained unchanged since the early 1980s, reflecting the dominant attitudes at that time towards people with mental health problems or intellectual disabilities in Bulgarian society.
- [92]. Under Bulgarian law, incompetence is the deprivation or limitation of a natural person's civil legal capacity (*дееспособност*) – their ability to conduct lawful legal acts, through which they initiate, preserve, amend or terminate rights and responsibilities.²⁰⁷ The Individuals and Family Act recognises only two degrees of incompetency: full and partial (*пълна и ограничена недееспособност*). An adult who has been declared partially incompetent is placed on the same level of ability to conduct legal affairs as a juvenile (14 to 18 years of age). A juvenile or an adult who has been declared fully incompetent is given the same status as a minor (up to 14 years of age). Under the IFA, plenary guardianship means that the adult's legal competency is entirely removed and the person is left with no legal powers; partial guardianship means that the adult's legal competency is limited rather than removed. Partial guardianship allows participation in legal actions only with the consent of the guardian.²⁰⁸
- [93]. A guardian is appointed for a person declared fully incompetent, while a trustee is appointed for a person declared partially incompetent. Full or partial incompetence is determined according to the severity of the person's condition. According to Article 5 of the IFA 'adults with such afflictions, whose condition is not so severe as to warrant declaration as fully incompetent, are declared partially incompetent.' The Individuals and Family Act links diagnosis to legal incompetence by its provision that adults who due to their 'imbecility or mental disorder' cannot take care of their affairs are found to be disabled by the court and placed under plenary guardianship.²⁰⁹ Bulgarian case-law shows that court decisions are based on past information about an adult's ability to make independent decisions, rather than solely on the diagnosis.²¹⁰ The law provides that people with less severe mental disabilities may be placed under partial guardianship.²¹¹ The Family Code also equates adults under guardianship with children, regulating adult guardianship in the same

²⁰³ Guardianship is Bulgaria's only legal response to people who require assistance to make decisions. There are no alternatives available, such as supported and assisted decision making (where someone provides help in a structured way), advance directives (where an adult specifies his or her wishes in the event of future functional incapacity) or powers of attorney (where an adult specifies a person to take decisions in the event of future functional incapacity).

²⁰⁴ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (09.08.1949), available at: <http://lex.bg/bg/laws/ldoc/2121624577> (last accessed on 06.11.2009).

²⁰⁵ Bulgaria/*Семеен кодекс* [Family Code] (01.10.2009).

²⁰⁶ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), available in English at: <http://www.sac.government.bg/home.nsf/0/BEED3F0C3B9ADD43C2256FCD004DA169?OpenDocument> (last accessed on 06.11.2009).

²⁰⁷ Pavlova, Maria, *Civil Law*, main section, paragraph 1, Sofi-R Press, Sofia, p. 232.

²⁰⁸ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (09.08.1949), Art. 3-5.

²⁰⁹ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (09.08.1949), Art. 5 (06.11.1953).

²¹⁰ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p.96,

http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed 06.11.2009).

²¹¹ Bulgaria/*Закон за лицата и семейството* [Individuals and Family Act] (09.08.1949), Art. 5, para.2.

provisions as apply to children without parental supervision. The Family Code thus contains no special obligations or recognition that acting as a guardian to an adult might have different requirements than acting as a guardian for a child.²¹²

- [94]. Bulgarian law employs a two-stage process. The first stage is a court procedure by which a person's legal capacity to exercise rights and accept legal responsibilities is limited or removed. The second is an administrative procedure during which a guardian is appointed for this person. In most cases courts do not appoint the guardian; guardianship bodies (i.e. mayors) make the appointment. Once appointed, a guardian exercises the person's rights and accepts legal responsibilities on his/her behalf.
- [95]. The court procedure for incapacitation starts with an application filed by the spouse, from close relatives, from the prosecutor or from anybody who has a legal interest in the matter.²¹³ This circle of people includes lineal and lateral relatives to the fourth degree, and any legal heirs threatened by the dissipation of the estate, who may not necessarily be close relatives.²¹⁴ The participation of a prosecutor is mandatory. The participation of a lawyer is not mandatory and research in 2007 concluded that a lawyer defended the person to be incapacitated in only three out of 73 cases.²¹⁵
- [96]. Only the regional courts have jurisdiction to declare legal incapacity of an adult. The courts are obliged only to hear the person to be incapacitated in order to form a personal impression of him/her and to question his/her relatives.²¹⁶ After questioning the adult, the court may decide that no other evidence is needed if it comes to the conclusion that the adult is mentally healthy.²¹⁷ An incapacity assessment is necessary only if the court decides that it cannot make a ruling solely on the basis of questioning of the adult and his or her relatives.²¹⁸
- [97]. Bulgarian law does not specify which relatives should be questioned, nor the subject matter of the questions. Generally, an incapacity assessment is required for a court to deprive an adult of legal competence. Witnesses are usually either family members who take care of the adult, or people who know the adult well, such as neighbours, social workers or people who work for the local municipality. In practice, they often describe the adult as 'psychotic' when referring to a person with psycho-social (mental health) disabilities, or 'helpless' when referring to a person with dementia or intellectual disabilities.²¹⁹ The incapacity assessment should detail the history of the adult's condition or illness, his/her current condition, witness statements and medical documentation. Depending on the findings, the expert suggests either that the adult is not placed under guardianship or proposes a form of guardianship. In every case in which incapacity was assessed, the judge followed the recommendation of the experts, and in most cases the applicant's wishes also.²²⁰ There is an option for the court to collect other evidence and to request an expert report.²²¹ If the judge orders an expert report to determine whether to find a person incapable and place the person under guardianship, there are no provisions in the law regarding how the expert should conduct the evaluation or what information the his/her report should contain. If the court refuses to accept the report's

²¹² Bulgaria/*Семеен кодекс* [Family Code] (01.10.2009), Art.153.

²¹³ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.336.

²¹⁴ Stalev, Zhivko, *Bulgarian Civil Procedural Law*, 6th ed., CIELA, Sofia, 2000, p. 578.

²¹⁵ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 79, http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed on 06.11.2009).

²¹⁶ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art.338.

²¹⁷ Bulgaria/*Върховен касационен съд* [Supreme Cassation Court], Decision N1538 (21.08.1961) in case 5408/61.

²¹⁸ Bulgaria/*Върховен касационен съд* [Supreme Cassation Court], Decision N593 (04.03.1967) in case 3218/66.

²¹⁹ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 79, http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed on 06.11.2009).

²²⁰ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 88, available at: http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed on 06.11.2009).

²²¹ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art. 338, para.1.

conclusions, it must provide reasons.²²² If the adult is in a hospital, the court can request information on the person's condition from the hospital.²²³

- [98]. Adults to be placed under guardianship are not entitled to free and effective legal aid nor do they receive such. Usually during the second (and often last) hearing the person to be incapacitated is not present.²²⁴ Significantly, research has found that the adult presented evidence only in the three (of 73) cases in which lawyers acted on their behalf.²²⁵
- [99]. After the questioning of the person, the court may decide to appoint a temporary guardian to take care of his/her property and personal interests.²²⁶ Also the guardianship authority (i.e. the mayor) is obliged to take measures to protect the incapacitated person and to make a list of his/her property before a guardian is appointed.²²⁷ If necessary the mayor can also appoint a person to temporarily carry out the functions of the guardian.²²⁸
- [100]. The guardianship authority is the mayor in each municipality and he/she appoints guardians and trustees.²²⁹ The mayor is also responsible for monitoring the guardian's activities and recommending activities and stopping them.²³⁰ The guardian/trustee is responsible for taking protective measures for the incapacitated adult and his/her property.²³¹
- [101]. Adults under plenary guardianship have no right to apply for their guardianship to be lifted as they are legally incompetent. Only the guardianship authority (mayor) and guardians have this right.²³²

Requirements for guardians

- [102]. Within 30 days of receiving a court decision on incapacitation or other notification to appoint a guardian, the guardianship authority must convene a board consisting of the guardian, a deputy and two advisors for adults under plenary guardianship. The latter are generally chosen from among the relatives and friends of the adult, who the guardianship authority believes will 'best care for' the adult's interests and who have given their written consent.²³³ The function of the guardianship board is to provide assistance to the guardian in carrying out his/her duties. Members of the guardianship board, trustees and deputy-trustees cannot be persons deprived of parental rights, convicted of severe deliberate crimes or adults under guardianship.²³⁴ For persons under partial guardianship the guardianship authority (i.e. the mayor) appoints a trustee and a deputy-trustee again among the relatives and close friends of the adult.²³⁵ People under partial guardianship are entitled to be heard by the guardianship authority before a guardian is appointed to them while persons under plenary guardianship do not have this right.²³⁶

²²² Bulgaria/Върховен касационен съд [Supreme Cassation Court], Decision N3152 (26.12.1969) in case 2365/69.

²²³ Bulgaria/Граждански процесуален кодекс [Civil Procedure Code] (01.03.2008), Art. 338, para.2.

²²⁴ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 81, available at: http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed on 06.11.2009).

²²⁵ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 84, available at: http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed on 06.11.2009).

²²⁶ Bulgaria/Граждански процесуален кодекс [Civil Procedure Code] (01.03.2008), Art. 337, para.2.

²²⁷ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 159.

²²⁸ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 159.

²²⁹ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 154.

²³⁰ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 170.

²³¹ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 164.

²³² Bulgaria/Граждански процесуален кодекс [Civil Procedure Code] (01.03.2008), Art. 340.

²³³ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 156.

²³⁴ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 158.

²³⁵ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 155, para.1.

²³⁶ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 155, para.3.

- [103]. In practice, there was no written evidence in any of the court files reviewed in a 2007 study that adults under guardianship were asked who they wished to become their guardian. In addition, interviews with the adults showed that it was presumed that the person who initiated proceedings would be the guardian since no one else wanted to be a guardian. None of the people interviewed and none of their relatives (or officials) appointed as guardians were aware of the nature and aims of guardianship.²³⁷ Usually the guardianship authority formally asked the relatives whether they would like to be guardians, and then the relatives signed a declaration of confirmation. The relationship between the adult and the relatives was not examined, nor was any conflict of interest analysed.²³⁸

Scope and extent of powers of the guardian

- [104]. The scope and authority of the guardian is all-encompassing rather than limited to the areas where the person concerned needs assistance. Legislation provides that the guardian must take care of the person under guardianship, manage his or her property, and represent the person to third persons.²³⁹ There is no list of rights or decisions expressly reserved for the adult under guardianship, so the legislation could be interpreted as authorising the guardian to make all personal decisions, including medical and financial decisions. This means that the guardian has the authority to make major decisions of a highly personal nature (institutionalisation, education, medical treatment, employment). The guardian also has the authority to make more minor decisions, such as what leisure activities the person concerned will engage in and with whom the person will socialise.
- [105]. The law does not provide for a complaint process that would trigger a review of the guardian's activities. The guardianship authority is empowered to require a report from the guardian at any time and for any reason.²⁴⁰ An annual report is required of guardians/trustees,²⁴¹ but since the content of these regular reports is not specified by law, these reports do not sufficiently address whether guardianship needs to be continued.²⁴² Once a person is placed under guardianship, it persists for his/her lifetime unless a specific application is made for restoration of his/her competence. Revocation of the guardianship requires demonstrable medical evidence that the person's mental health has improved. The guardian can be replaced if his/her advisors (members of the guardianship board) suggest so to the guardianship authority if they notice his activities are not in the best interests of the person under guardianship.²⁴³
- [106]. In practice, judges who hear cases on incapacitation seem to be oblivious to the real-life consequences of guardianship. None had ever visited a guardianship authority to see how guardians were appointed and how the authority controlled guardians' actions. Judges do not perceive guardianship as a life-time deprivation of rights.²⁴⁴

Appeal procedures against a decision to appoint a guardian

- [107]. There are no legislative provisions requiring the guardianship authority to investigate or take any other action with regards to complaints that it receives. The law does not provide for a mechanism for the adult under guardianship to file a complaint against the guardian. The

²³⁷ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 98.

²³⁸ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 98, available at: http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed on 06.11.2009).

²³⁹ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 164, para.2.

²⁴⁰ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 171, para.1.

²⁴¹ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 171, para.1.

²⁴² *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 110, available at:

http://www.mdac.info/documents/Bulgaria%20report_comprehensive_English.pdf (last accessed on 06.11.2009).

²⁴³ Bulgaria/Семеен кодекс [Family Code] (01.10.2009), Art. 166, para.1.

²⁴⁴ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 112.

decisions of the guardianship authority can be appealed to a district court by an interested party, but only people under partial guardianship enjoy this right.²⁴⁵

Review of the decisions of incapacity and the need for a guardian

- [108]. Bulgarian law does not contain any provision for periodic review either of the necessity of guardianship nor of the need of the guardian. There is no limitation on the duration of guardianship once it is established. Adults under partial guardianship have the right to request termination of guardianship with the consent of the guardian.²⁴⁶ Adults under plenary guardianship may only request that the guardian or guardianship authority²⁴⁷ file the request on their behalf but have no right to file the application themselves. If the guardian and the guardianship authority refuse to file an application, the adult can ask the prosecutor to do so.²⁴⁸ However, if the prosecutor refuses, there is no recourse for the adult under plenary guardianship.
- [109]. In March 2005, the Ministry of Labour and Social Policy launched a policy for monitoring the condition of residents in social care institutions. The letter mandated local guardianship authorities (mayors) to identify adults whose condition had changed and thus whose guardianship should be reviewed. Some municipalities set up committees to assess all residents and decide whether a court procedure should be initiated.²⁴⁹ Before the 2005 Ministerial policy on reviewing guardianships, NGOs helped adults in social care institutions to initiate review procedures by themselves. Applications sent by the residents to the local prosecutors' offices were accompanied by a letter written by an NGO researcher, as well as a report on conditions in homes and guardianship issues. Accordingly, some prosecutors decided to initiate a procedure, but the majority refused.²⁵⁰
- [110]. Research conducted in 2007 concluded that no effective mechanisms exist for people under guardianship to seek a review of guardianship. Even when an NGO provides a *pro bono* lawyer who experiments with different strategies, the cases invariably fail. The cases described in Annex 2 also illustrate the difficulty in changing from plenary to partial guardianship, in removing the guardian and appointing someone else, and in obliging the guardian to carry out their duties. Guardianship authorities do not control guardians and thus fail in their most basic duty: to ensure the protection of potentially vulnerable adults.²⁵¹
- [111]. In 2008 the Bulgarian Helsinki Committee achieved an unprecedented success with regard to case-law in the field of guardianship. In a decision of 12.12.2008, the *Апелативен съд – гр. София* [Sofia Appellate Court (SAC)] repealed the guardianship of a young man after four years of legal proceedings. In its decision, the SAC accepted that a developmental disability and 'a mental disorder in the wide meaning of the word' are not grounds for incapacitation, thus indicating a positive change in the Court's attitude to the problems of people with mental disorders and developmental disabilities. A real chance for legislative change to improve the situation of the incapacitated people was missed in 2008. The new Civil Procedure Code became effective on 01.03.2008 but it does not entail a change in the rules for incapacitation and restoration of capacity. As in its previous versions, there are no

²⁴⁵ Bulgaria/*Семеен кодекс* [Family Code] (01.10.2009), Art. 161.

²⁴⁶ Bulgaria/*Върховен касационен съд* [Supreme Cassation Court], Decree 5/79 (13.02.1980), para. 10.

²⁴⁷ Bulgaria/*Граждански процесуален кодекс* [Civil Procedure Code] (01.03.2008), Art. 28, para.4., Art. 340.

²⁴⁸ Bulgaria/*Върховен касационен съд* [Supreme Cassation Court], Decree 5/79 (13.02.1980), para. 10.

²⁴⁹ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 101, 'Members of these committees were usually officials working in the social services department at the municipality, regional representatives of the Ministry of Health, or the residents' general practitioner, representatives of local nongovernmental organisations, and directors, social workers, and officials from the social services department of the Ministry of Labour and Social Policy. The committee members generally had no expertise in guardianship, and the Ministry appears not to have provided any guidance on how to proceed.'

²⁵⁰ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 104.

²⁵¹ *Guardianship and Human Rights in Bulgaria*, Mental Disability Advocacy Center, 2007, p. 110.

provisions that guarantee access to court for people under guardianship. A Family Code bill was submitted to the National Assembly on 01.04.2008. The bill was adopted at first reading in October and finally was adopted and entered into force on 01.10.2009. Similarly to Civil Procedure Code, the Family Code does not contain provisions that would improve the situation of the people under guardianship.²⁵²

7. Miscellaneous

[112]. Our research did not identify any miscellaneous issues.

²⁵² 2008 Annual Report, *Human Rights in Bulgaria*, Bulgarian Helsinki Committee, p.39, available in English at: http://www.bghelsinki.org/upload/resources/Humanrights2008_en.pdf (last accessed on 06.11.2009).

Annexes-Case Law

Right to life

Case title	V.L. vs social care institution
Decision date	18.10.2007, 28.08.2007, 22.06.2007
Reference details	Case 143/2007 (Окръжна прокуратура – Габрово) Regional Prosecution service - Gabrovo Case 1132/2007 (Апелативна прокуратура – В. Търново) Appellate Prosecution service – V. Turnovo Case 16396/2007 (Върховна Касационна Прокуратура) Supreme Cassation Prosecution service
Key facts of the case (max. 500 chars)	V.L. was born in 1974 and suffered from schizophrenia since 1992. She was placed in a social care institution in 1998. On 3.01.2007 she run away from the institution and five days later her parents received a message that she got lost. On 22.01.2007 V. L. was found dead in a forest twenty kilometers away from the institution. The reason for the death was ‘hypothermia’. On 23.01.2007 her brother – I. L. filed a request before the District Prosecution service asking for investigation. On 26.01.2007 the claim was sent to the Regional Prosecution service by competence. On 09.03.2007 the Regional Prosecutor ceased the proceedings of the investigation because of lack of criminal offence. V.L.’s brother appealed this decision. On 05.04.2007 the Regional Prosecutor returned the case for new investigation. On 21.05.2007 the District Prosecutor ceased the proceedings again. On 28.05.2007 I.L. appealed this decision. This time the Regional Prosecutor confirmed the ceasure of the investigation. I.L. appealed the decision before the Appellate Prosecutor who confirmed the ceasure too. After the decision was appealed before the Cassation Prosecutor, the latter confirmed the ceasure on 18.10.2007. On 09.12.2008 a complaint (No 26874/2008) was sent to the European Court of Human Rights (ECHR) claiming violation of Art. 2. The case is pending before the ECHR.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The main arguments of the prosecutors were that there was no evidence for committal of a crime on behalf of the staff in the social care institution that might lead to the death of the woman. There is no evidence that any investigation was done to support that conclusion.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Criminal Code or any other Bulgarian legislation does not provide for sufficient remedies for the protection of an adult with mental disorder living in an institution even when the right to life is concerned. Real investigation is not carried out in practice.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Bulgarian prosecutors are not able to find any link between a death of a person with mental disorder in a social care institution and the actions/non-actions of the staff in the institution.</p>

Proposal of key words for data base	Right to life, investigation, social care institution
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

Case title	I.V., E.V.(mother) and N. V. (father) vs psychiatric hospital
Decision date	10.07.2006, 02.04.2007, 18.05.2007 Lovech Regional Court 12.09.2007 Veliko Turnovo Appellate Court
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision #89/10.07.2006 (Окръжен съд – гр.Ловеч) Lovech Regional Court Decision #40/02.04.2007 (Окръжен съд – гр.Ловеч) Lovech Regional Court Decision #63/18.05.2007 (Окръжен съд – гр.Ловеч) Lovech Regional Court Decision #55/12.09.2007 (Апелативен съд – гр. В. Търново) (Veliko Turnovo Appellate Court)

<p>Key facts of the case (max. 500 chars)</p>	<p>I.V. was admitted at psychiatric hospital on 27.06.2005 as an involuntary patient. Three days later he died of cardiac attack under suspicious circumstances in the hospital. At the moment of his death he was restrained and secluded after reportedly becoming aggressive and a danger to himself and other patients (and allegedly trying to escape the hospital). I.V.'s relatives who collected the body from the hospital noticed bruises on the forehead and neck. There was no post-mortem examination, however, as I.V.'s father allegedly did not consent to an autopsy. I.V.'s parents requested that the District Prosecution service carry out an investigation into the case, but the prosecution service refused to do so pointing to the absence of evidence of any crime by the hospital and hospital staff. The District Court overturned the prosecutor's refusal to investigate and an investigation was commenced. The prosecution service terminated the investigation several months later finding no incriminating evidence.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>On 10.07.2006 the Regional Court overturned the refusal of the Prosecution service to initiate an investigation into the circumstances of I.V.'s death. The court ordered that further evidence be collected – such as taking statements from I.V.'s father who collected the body from the hospital and other relative who participated in the arrangements for the funeral, collecting more information on the number and nature of the alleged bruises, as well as the reasons for the non-performance of an autopsy and investigating the circumstances of I.V.'s immobilization leading to his death. On 2.04.2007, the Regional Court refused to hear an appeal of the decision of the Prosecution service to terminate the investigation of I.V.'s death. The court stated that the appeal was untimely filed. The Appellate Court reversed this decision and sent the case back to the Regional Court. On 18.05.2007 the Regional Court considered the merits of the prosecutor's decision to terminate the investigation of I.V.'s death. The court ruled that the decision was supported by the facts and the law of the case. It accepted the conclusions of the investigation that I.V.'s death was possibly an unfortunate side-effect of the medication administered in response to his deteriorating condition and increased volatility. The court also pointed out that the only evidence of possible ill-treatment by hospital personnel – the testimony of I.V.'s father and brother – was somewhat contradictory; the court also stressed that I.V.'s relatives must not have had serious doubts about the cause of his death since they refused an autopsy and proceeded with the funeral. The Appellate Court affirmed. It found no error in the findings and reasoning of the lower court regarding the events that surrounded I.V.'s death. The court held that I.V.'s state of psychic agitation, combined with his stated intent to escape from the hospital, justified the decision of the staff to isolate and immobilize him. The administered medication was also within the dosage requirements prescribed by law. The court also pointed out that the testimony of I.V.'s relatives about the signs of possible mistreatment is unreliable first because they lack training in</p>

	<p>forensic pathology and second because their grief was possibly leading them to believe that I.V.'s death was intentional.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The first time the regional court ruled that the prosecutor's refusal to initiate an investigation about the circumstances of I.V.'s death was unjustified given the need to collect more evidence on the allegations of death. A subsequent regional court decision, which was affirmed on appeal by the Appellate Court, upheld the decision of the prosecutor's office to terminate the investigation into the case after no evidence of a crime was found.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The case showed the lack of effective investigation of death cases in psychiatric hospitals. An application (No 20312/2008) before the European Court of Human Rights was filed.</p>

Proposal of key words for data base	death in a psychiatric hospital, ineffective investigation into a death in a psychiatric hospital
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

Right to vote

Case title	G.G. vs psychiatric hospital
Decision date	25.06.2005
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	795a/2005 (Районна прокуратура гр. Раднево) Radnevo District Prosecution service

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<p>Key facts of the case (max. 500 chars)</p>	<p>In 2005 G.G. was placed in a psychiatric hospital for compulsory treatment, whereas he was not placed under guardianship. There was not an election section for parliamentary elections placed inside the institution. G.G. and some other patients were not allowed to leave the hospital to vote. The Bulgarian Helsinki Committee after monitoring the hospital and finding out about that sent a request to the local prosecution service to initiate a criminal procedure on the case. The Prosecution service did not find grounds to initiate a criminal procedure. A complaint under the Protection Against Discrimination Act was filed to the court, but there is not any decision on the case yet.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Prosecution service stated that the right to vote of G.G. and other patients was not violated. The medical examination appointed by the director of the hospital concluded that some patients were in a mental condition not allowing them to vote. To prevent patients' and public interest the director decided not to allow those patients to leave the hospital to vote. Based on gathered evidence the Prosecution service concluded that the director's decision was right and he did not commit a crime.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Prosecution service held that the director did not violate the right to vote of G.G and other patients, because his decision was based on his obligation to protect the patients. Such situations can be avoided in future if an election section is placed inside the hospital.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>In case of G.G. he was placed for compulsory treatment, but not under guardianship. Nevertheless he could not vote. The Prosecution service stated that it would notify the director and the mayor of the town where the hospital was located to place an election section inside the hospital in the future.</p>

Proposal of key words for data base	right to vote, involuntary treatment
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Compulsory treatment/ compensation for unlawful detention

Case title	G.B vs. Plovdiv police station and psychiatric hospital
Decision date	27.10.2005 – compulsory treatment case, 17.03.2009 – compensation for unlawful detention
Reference details	Case 699/2005 (Пловдивски районен съд) Plovdiv District Court – compulsory treatment Case 2965/2009 (Пловдивски районен съд) Plovdiv District Court – compensation for unlawful detention

<p>Key facts of the case (max. 500 chars)</p>	<p>G.B. is a 61 year-old woman suffering from intellectual disability who is unable to write and read. In June 1998 she was placed under guardianship but no guardian has ever been appointed to her. In August 2005, without prior notification, she was taken from her home by an ambulance and police officers and committed the same day to a psychiatric hospital. It turned out that her recently moved neighbours submitted the application to the prosecution service requesting involuntary commitment against G.B. in June 2005. In July 2005 a policeman prepared a report stating that G.B. has clear symptoms of mental disease and that she is dangerous to herself and others. The local psychiatric hospital informed the policeman that G.B. is not included in their register. Nevertheless, in August 2005 the prosecution service sent a motion to the court for initiation of proceedings for compulsory treatment. Seventy-four of G.B.'s neighbors have signed a declaration stating that she does not pose any threat to the community. After 23 days G. was released from the hospital because her relatives insisted on that. The court case has two hearings in October 2005 – the court heard witnesses and a psychiatrists report. The case was closed because the court did not find any reasons for compulsory treatment.</p> <p>On 10.02.2006, a claim was lodged on G.B.'s behalf for non-pecuniary damages against the police station and the psychiatric hospital. The claim challenges the lawfulness of the police detention, the invalidity of the blank consent G.B. signed and the lawfulness of the detention in the psychiatric hospital. It seeks a compensation for the non-pecuniary damages under Art.2 (1) of Law on the State Liability for Damages Inflicted on Citizens for both detentions.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>In the compulsory treatment case the court found that there is no reason for placement for compulsory treatment as the person's condition improved and she does not need the treatment.</p> <p>Regarding the compensation for the unlawful detention case G.B.'s lawyer was notified by the court that in order to start the proceedings on the case the court needs to receive a document verifying that G.B.'s guardian gives consent for the proceedings. The court requested power of attorney signed by the guardian and a declaration. As G.B. had no guardian appointed by the guardianship body (mayor), the court issued a certificate to G.B.'s lawyer allowing her to ask the guardianship body who G.B.'s guardian is. In the meantime the court tried to cease the case on this ground and the lawyer appealed all the decisions. On 23.08.2006 finally the guardianship body issued a document stating that G.B. has no guardian appointed and it was enclosed in the court case file. Because of G.B.'s lack of capacity to sign power of attorney and lack of guardian the court decided to end the proceedings.</p>

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Persons under guardianship often are not appointed guardians after being incapacitated by the court. Thus they are denied of access to justice and access to a fair trial along with many other civil rights. This is how they have no protection against unlawful detention and treatment as they even are not entitled to start proceedings to prove the unlawfulness of these actions of state authorities and they are not entitled to sign a power of attorney. The guardianship bodies do not fulfil their obligations to appoint guardians of people who had been incapacitated by the court and there is no control over them.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The applicant was denied access to justice and access to a fair trial because of the lack of a guardian.</p>
<p>Proposal of key words for data base</p>	<p>Compulsory treatment, unlawful detention by the police, compensation for non-pecuniary damages</p>

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

Case title	I.A. vs. in-patient compulsory treatment
Decision date	30.09.2005 (Plovdiv District Court); 28.10.2005 (Plovdiv Regional Court); 06.06.2007 (Pazardjik District Court)
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Decision #609 (06.06.2007) – (Районен съд – Пазарджик) Pazardjik District Court Decision #802 (28. 10.2005) – (Окръжен съд- Пловдив) Plovdiv Regional Court Decision #320 (30.09.2005) – (Районен съд – Пловдив) Plovdiv District Court
Key facts of the case (max. 500 chars)	I.A. is a 36 year-old woman. She is a member of the Church of Jesus Christ of the Latter-day Saints. I.A.'s mother suffers from a severe psychic disorder; I. A. and her father argue frequently sometimes resorting to physical violence. It is I.A.'s father who approached the Plovdiv District Prosecution service to initiate involuntary commitment proceedings against I.A. On 5.07.2007 the Prosecution service filed a complaint to the District Court asking for I.A.'s involuntary commitment. The complaint alleged that I.A. had a mental disorder which she had refused to treat and which presented a threat to I.A. and others. On 21.09.2005 the District Court ordered an immediate in-patient psychiatric assessment. I.A. was hospitalized for a ten-day assessment. On 30.09.2005 the District Court held another hearing and accepted the recommendation of the court-ordered assessment that I.A. had a 'delusional psychotic disorder' because of which she needs an in-patient treatment. The court ruled that I.A. is incapable of giving informed consent and ordered her involuntary commitment for a two-month psychiatric treatment. I.A. appealed and after a month the Regional Court reversed the lower court's decision in part and affirmed in part. The Regional Court agreed that I.A. required treatment, but disagreed that it needs to be in-patient treatment. In 2006 I.A. sued the District Court under the Law on State liability for Damages Inflicted on Citizens claiming that her court-ordered in-patient assessment from 22 to 30 September 2005 caused her material and emotional harm. The Pazardjik District Court rejected I.A.'s claim.

Main reasoning/argumentation (max. 500 chars)	<p>In its decision from 30.09.2005, the Plovdiv District Court ordered I.A. to undergo compulsory two-month in-patient treatment accepting the conclusions of the psychiatric assessment that I.A. was suffering from a delusional psychotic disorder. The court observed that I.A. was reluctant to acknowledge her condition and to seek treatment. In the court's view that was sufficient argument for I.A.'s involuntary commitment. The court further explained that I.A.'s disregard for her disorder necessitated that the treatment be carried out in-house. Further, the District Court held that I.A. was incapable of giving informed consent and ordered the Plovdiv mayor to appoint a person to consent on her behalf. On appeal the Plovdiv Regional Court agreed that I.A.'s condition required treatment, but concluded that out-patient treatment would be sufficient as there was no evidence that I.A.'s behaviour was aggressive or anti-social enough to require in-patient commitment.</p> <p>The Pazardjik District Court ruled against I.A. in her suit for non-pecuniary damages against the Plovdiv District Court under the Law on State Liability for Damages Inflicted on Citizens. The Law gives individuals the right to sue the State and its bodies for damages incurred as a result of involuntary treatment or the imposition of medical measures which are later revoked as legally unfounded. The Law also envisions a right to damages in cases of unlawful detention. I.A. claimed that her involuntary commitment from 22 to 30 September 2005 for assessment purposes caused her material and non-material harm. The Pazardjik District Court found that 1) the commitment did not amount to a 'treatment' as required by the Law; I.A. did not receive any medication during the course of it, and 2) the term 'imposition of medical measures' is a term of art under the Criminal Code which refers to situations of criminal commitment, where medical measures are imposed on the perpetrator of a crime who suffers from an addiction or other psychological disorder; furthermore, the 'measures' imposed on I.A. were not revoked by the higher course, but only modified as such. Finally, the court concluded that I.A.'s involuntary commitment did not amount to an unlawful detention, thus refusing to interpret expansively the provision for compensation for unlawful detention under the Law.</p>
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<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The commitment for psychiatric assessment does not amount to a ‘treatment’ as required by the Law on State Liability for Damages Inflicted on Citizens. The term ‘imposition of medical measures’ in the same Law is a term of art under the Criminal Code which refers to situations of criminal commitment.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Plovdiv Regional Court affirmed the involuntary commitment of I.A. to a psychiatric hospital, but disagreed that the treatment had to be in-patient. Thus, it modified the lower court’s decision and ordered I.A. to undergo out-patient psychiatric treatment. The Pazardjik District Court’s refused to grant damages to the applicant.</p>
<p>Proposal of key words for data base</p>	<p>Court-ordered psychiatric assessment, in-patient compulsory treatment</p>

Review/termination of guardianship

Case title	G.C. vs guardianship
Decision date	24.07.2006; 15.06.2007; 11.11.2005
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Case 142/2006 (Софийски Окръжен Съд) Sofia District Court Case 1727/2006 (Софийски Апелативен Съд) Sofia Appellate Court Case 5560/2007 (Върховен Касационен Съд) Supreme Cassation Court
Key facts of the case (max. 500 chars)	In 2001 the Regional Prosecutor petitioned the court for placement of G.C. under plenary guardianship. The court held that G.C. should be placed under plenary guardianship and appointed a guardian for him. Later G.C. was placed in a social care institution. The appointed guardian believed that G.C. is fully capable of caring for his interests and a petition for termination of the guardianship was filed with the court for termination of his guardianship. The third instance court terminated G.C.'s guardianship.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Regional Court refused to terminate the guardianship of G.C. The court stated that there is no change in the condition of G.C. and the latter is still not capable of caring himself for his own affairs and interests. The Appellate Court after considering the evidence found that G.C., although being to some extent ‘mentally retarded’, has some capacity to care for his own interests and modified the guardianship from plenary to partial. After this decision was appealed the Supreme Cassation Court terminated the guardianship.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Supreme Cassation Court stated that in the case of G.C. the guardianship shall be terminated because the two preconditions (legal test and medical test) required by law for placement under guardianship are no longer present. Thus, whenever only the medical test is met one shall not be declared as incapacitated and no guardian shall be appointed.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court has stated as <i>obiter dictum</i> that the incapacitation of G.C. and his placement in a social care institution shall not affect his social integration (with the assistance of the competent government bodies). The Supreme Cassation Court concluded that G.C. is fully capable of caring alone for his interests and since the legal test for placement under guardianship is not met the guardianship shall be terminated.</p>
<p>Proposal of key words for data base</p>	<p>guardianship, incapacitated person, appointment, modification and termination of guardianship</p>

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Review/termination of guardianship

1.

Case title	R.S. vs guardianship
Decision date	10.08. 2005; 20.10.2005; 29.11.2005
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Case 257/2005 (Окръжна прокуратура гр. Кюстендил) Kjustendil District Prosecution service Case 7570/2005 (Апелативна прокуратура гр. София) Sofia Appellate Prosecution service Case 68761/2005 (Върховна касационна прокуратура) Supreme Cassation Prosecution service
Key facts of the case (max. 500 chars)	R.S is a man placed under partial guardianship in 2000 and placed in a social care institution after that. In 2004 R.S. made attempts to have his legal capacity reviewed and restored by submitting petitions to his guardian, respective prosecutor's office and two municipalities – the one where he used to live before the placement in a social care home and the one in which the institution is located. Upon being unsuccessful with all bodies R.S. lodged appeals and continued to appeal the subsequent decisions until all possibilities for lifting the guardianship were exhausted. A complaint with European Court of Human Rights was filed under Art. 3, 5, 6, 8 and 13. There will be a hearing on 10.11.2009 before the ECHR.
Main reasoning/argumentation (max. 500 chars)	The District Prosecution service refused to lodge a petition for termination of the guardianship of R.S. Based on gathered evidence (medical examination and opinions of the guardian and a social worker) the prosecutor stated that R.S. was not capable of caring himself for his own affairs and interests. The Appellate Prosecution service confirmed that R.S. was incapable of looking after his own interests and stated that the prosecution service was obligated to protect public interests and had the right to decide whether to file or not a petition for lifting the guardianship. The same was held by the Supreme Cassation Prosecution service, whereas the decision of Appellate Prosecution service was confirmed.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Supreme Cassation Prosecution service stated that in the case of R.S. a petition for termination of the guardianship shall not be lodged because the two preconditions (legal test and medical test) required by law for appointment of a guardian were still present. The prosecution service held that it has discretion to file or not a petition based on its own belief whether such petition will protect the public interest or not.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Based on gathered evidence the Supreme Cassation Prosecution service concluded that R.S. was incapable of caring alone for his interests and since the legal test for appointment of guardian was still met a petition for lifting the guardianship shall not be lodged. In cases of guardianship the prosecutor has the right and the obligation to decide whether to file or not a petition. In the case of R.S. the prosecution service, the respective municipality and the guardian refused to lodge a petition for lifting the guardianship.
Proposal of key words for data base	guardianship, incapacitated person, termination of guardianship

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

Review/termination of guardianship

Case title	D.M. vs guardianship
Decision date	18.07.2005

1.

Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	<p>Case 721/04 (Окръжна прокуратура- гр. Шумен) Shumen District Prosecution service Case 572/2005 (Апелативна прокуратура –гр.Варна) Varna Appellate Prosecution service Case 57554/2005 (Върховна касационна прокуратура) Supreme Cassation Prosecution service</p>
Key facts of the case (max. 500 chars)	<p>D.M. is a 65-year-old man who lives in a social care institution. He is divorced and has a daughter. He was placed under plenary guardianship on 29.04.2002. Two months later, Shumen’s mayor appointed a guardianship board that included D.M.’s daughter. Three months later, the guardian asked the Social Assistance Services to accommodate her father in a social care institution. On 13.05.2003, D.M. was taken to the social care institution. In November 2004, D.M. sent an application to the Regional Prosecution service requesting a review of his guardianship. In December 2004, a policeman questioned D.M.’s ex-wife, his daughter and a third person – all of whom were members of the guardianship board. They described his behaviour during the last years as aggressive and dangerous to himself and to others. The policeman also questioned a neighbour, who said D.M. felt better after the treatment. The director of the social care institution stated that D.M. was able to take care of himself, was not aggressive and was a sociable person who knew his rights and obligations. Four months after the prosecutor received the policeman report he asked for an psychiatrist assessment of the man’s condition. The psychiatrist concluded that D.M. ‘has suffered from schizophrenic psychosis for a long period of time with a developed and continuous course of the disorder, accompanied by alteration of personality. Due to his condition, he is mentally/intellectually incapacitated and incapable of taking care of his own affairs and protecting his interests.’</p> <p>In August 2005 D.M.’s lawyer requested the mayor to initiate a procedure for lifting D.M.’s guardianship. D.M.’s guardians refused to file his motion to the court for lifting up his guardianship and this refusal was appealed in the court. In December 2006 the court held that the D.M.’s claim was refused. As he had not the right to appeal or other remedy available, in September 2007 D.M.’s application was sent to European Court of Human Rights alleging violations of Articles 5(1), 5(4), 5(5), 6(1), 8, and 13 in conjunction with the Articles 5(1), 5(4), 5(5), 6(1) and 8 of the European Convention of Human Rights. In July 2008 D.M.’s lawyer was notified that D.M. suffers from cancer and sent a request for priority treatment of his case before the ECHR. On 5.09.2008 DM. died. D.M.’s case was communicated to the Bulgarian Government which was supposed to reply by 16.02.2009. D.M.’s case granted priority treatment and there would be public hearings on it on 10.11.2009.</p>

Main reasoning/argumentation (max. 500 chars)	The Shumen Regional Prosecution service refused to start a procedure for a review of D.M.'s guardianship as the evidence gathered on the case showed D.M. due to his disease is not capable of caring for his affairs. The Varna Appeal Prosecution service rejected the request five days later with the same arguments. The Supreme Cassation Prosecution service rejected the request in October 2005 on the same ground. As all domestic remedies had been exhausted, D.M.'s lawyers helped him send an application to the European Court of Human Rights (No: 13587/2006) in April 2006, arguing that there is no remedy in Bulgaria because a person under guardianship has to rely on the goodwill of the prosecutor to send the case to court to review.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The person under guardianship is prohibited from having direct access to a court. D.M.'s case demonstrated the inability of judges to decide whether the adult was able to take care of himself, even in light of such facts as the adult's ability to start to work for a reasonable salary. His guardian failed to undertake simple actions like providing documents or informing him about an upcoming medical examination, but was still considered by the court as more responsible regarding the adult than the adult himself.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Based on gathered evidence the Supreme Cassation Prosecution service concluded that D.M. was incapable of caring alone for his interests and since the legal test for appointment of guardian was still met an application for lifting the guardianship shall not be lodged. In cases of guardianship the prosecutor has the right and the obligation to decide whether or not to file a petition. In the case of D.M. the prosecution service, the respective municipality and the guardian refused to lodge a petition for lifting the guardianship
Proposal of key words for data base	guardianship, incapacitated person, termination of guardianship

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1.

Case title	V.P. vs. guardianship
Decision date	04.01.2007, 22.06. 2007; 07.10.2007; 22.01.2008; 04.02.2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Case 1050/06 -III (Градска прокуратура - гр. София) Sofia City Prosecution service Case 02000/2006 (Софийски Градски Съд) Sofia City Court Case 4933/2007 (Апелативна прокуратура - гр. София) Sofia Appellate Prosecution service Case 11955/2007 (Върховен административен съд) Supreme Administrative Court Case 18199/2008 (Върховна касационна прокуратура) Supreme Cassation Prosecution service
Key facts of the case (max. 500 chars)	In October 2000 V.P. was placed under plenary guardianship. Later V.P. was placed in a social care institution. In 2004 V.P. made attempts to have his guardianship terminated by requesting assistance from his guardian, prosecutor's office and guardianship body (mayor). None of them agreed to file an application to the court for lifting V.P.'s guardianship. The decision of the District Prosecution service not to file a motion was appealed and an additional examination of the case of V.P. was ordered by the Supreme Cassation Prosecution service. The decision of the municipality not to file an application was appealed and confirmed by the Supreme Administrative Court.
Main reasoning/argumentation (max. 500 chars)	The District Prosecution service concluded that V.P. was incapable of looking after his own affairs and interests and refused to lodge a motion for termination of his guardianship. The Appellate Prosecution service confirmed that decision and stated that the prosecutor's office is not the only body authorized to file such petition. The Supreme Cassation Prosecution service held that prosecution service had to act if other authorized bodies remained inactive, but in the case of V.P. more evidence need to be gathered before filing or not a motion to a court. The Supreme Administrative Court stated that in the case of V.P. the municipality did not refuse to lodge an application, but requested more evidence supporting the ability of V.P. to take care of his affairs by himself. Nevertheless, the decision of the municipality was not an administrative act and was not subject to appeal. Besides, such decision did not preclude V.P.'s right to request assistance for lifting the guardianship from other authorized bodies.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>A motion for lifting the guardianship could be filed by more than one authorized body. If one of the authorized bodies refused to lodge a petition, it could be filed by another body. The decision of a Prosecution service whether to lodge a motion had to be based on enough evidence that V.P. became capable of caring himself for his own affairs and interests. The municipality (represented by a mayor) had discretion to file or not file an application based on its own belief and evidence on V.P.'s ability of looking after his own affairs and interests. Its decision was not subject to appeal.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Based on gathered evidence the Supreme Cassation Prosecution service returned the case of V.P. to the District Prosecution service for additional examination. The municipality and the guardian of V.P. did not file an application on behalf of V.P. for termination of his guardianship. V.P. escaped from the social care institution and is homeless at present.</p>
<p>Proposal of key words for data base</p>	<p>guardianship, incapacitated person, termination of guardianship</p>

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