



**MONITORING OF THE UN CONVENTION AGAINST TORTURE AND OTHER
CRUEL, UNHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
IN BULGARIA**

SUMMARY OF REPORT 2021

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THE CONVENTION

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) was adopted by the General Assembly on 10 December 1984 and entered into force on 26 June 1987.

The Convention is the most significant international human rights treaty to insist on the universal abolition of torture and completes the process of codifying the fight against torture.

The main idea of the Convention is to unite States in their fight against torture by taking positive action to prevent it at both national and international levels. Specifically, the Convention requires States Parties to criminalize torture as a form of offence in their national legislation. In addition, the Convention establishes an international mechanism to monitor the implementation of its provisions, the UN Committee against Torture.

The Convention introduces two types of obligations on States: positive and negative. Negative obligations require each State to refrain from all forms of ill-treatment. **All acts containing the characteristics of torture should be criminalized and prosecuted as crimes in the domestic law of each State.**

Positive obligations are linked to the adoption of concrete measures to prevent torture (legislative, administrative, judicial, provision of training for staff in places of deprivation of liberty or others). In cases where a violation of the prohibition of torture has occurred, States should ensure that victims are fairly and adequately compensated.

On 18 December 2002, the UN General Assembly adopted the Optional Protocol to the Convention. The purpose of the Optional Protocol, in force since 22 June 2006, is to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment and to establish a preventive system. One element of the preventive system is the **establishment and maintenance of an independent NPM** for the prevention of torture and ill-treatment at national level.



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With the amendments to the Ombudsman Act in 2012, the Ombudsman of the Republic of Bulgaria began to perform the functions of the NPM in accordance with the Optional Protocol to the Convention. In this role, the Ombudsman carries out annual monitoring of places for serving imprisonment under the Ministry of Justice, places of detention of persons in the structures of the Ministry of the Interior, special homes for accommodation of foreigners under the Migration Directorate and registration and reception centres of the State Agency for Refugees under the Council of Ministers, residential social services for children and adults, public psychiatric hospitals.

UN CAT IMPLEMENTATION IN BULGARIA 2021

The main recommendations of the Committee for the Prevention of Torture to the Republic of Bulgaria issued within the VIth Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment continued to be valid in 2021:

- A repeated recommendation of the Committee to the institutions in the Republic of Bulgaria refers to the need to adopt a legal definition of torture in the Criminal Code which will contain all elements envisaged in Article 1 of the Convention. So far, despite the commitment of the state, this recommendation of the Committee has not been implemented. The Committee for the Prevention of Torture expresses concerns in relation to the use of force and auxiliary means in prisons and police departments.

In the capacity of NPM, the Ombudsman has repeatedly found that the irregular use of auxiliary means (handcuffs) continues throughout the entire penitentiary system when external positions are opened at medical institutions. In this regard, the Ombudsman has issued recommendations to the Minister of Justice for urgent and effective administrative measures to eliminate torture, cruel, inhuman or degrading treatment or punishment in the event of conveying and movement of persons deprived of liberty from sleeping premises to outdoor stay and when visiting internal and external medical institutions. In 2021, the Ombudsman as NPM inspected eight premises of detained persons within the Ministry of Interior. Persistent problems in the system of the 24-hour detention in police departments are still relevant. There are poor material and living conditions, lack of service facilities, lack of access to ventilation and natural light. In some of the inspected places no persons are detained due to lack of staff and individual guards.

Detainees are provided with the opportunity to use medical help. This was stated in the declarations they filled in upon their detention. Medical help is also provided at the judgment of the staff when the health conditions so requires. Pursuant to Article 21, paragraph 1 of Instruction No.1821z-78 of 2015 on the procedure for detention, equipment of premises for detainees and the order applied therein at the Ministry of the Interior the detainee is subject to a medical examination at his/her request or where his/her health condition so requires. Medical examinations or refusals



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to undergo such are reflected in a Register of Detainees. Every file is appended with a report from the Emergency Medical Assistance Centre where detainees are usually examined.

The Ombudsman as NPM examines these issues in detail in the annual reports and makes specific recommendations to the Minister of Justice and the Minister of Interior.

Another important topic is related to the situation of persons accommodated in social institutions. Recommendations were made to the competent state authorities on the need to provide sufficient legal guarantees for these persons, to improve their material conditions, as well as the need for independent monitoring to determine the degree of respect for their rights.

A repeated finding of the Ombudsman is that the system for institutional social care has not been reformed yet and the quality of the social service has not improved yet. One of the main problems is that the homes for adults with mental disabilities, mental disorders and dementia are often located outside settlements and have poor road and communication infrastructure which hampers the access of specialists. Over the years, the Ombudsman as NPM has recommended many times acceleration of the process of deinstitutionalisation because the long-term stay of people with disabilities at institutions infringes fundamental human rights. Placement of a person from family environment at an institution should be done as a last resort of protection.

In various family-type accommodation centers for children or young people with disabilities it has been repeatedly established that the care provided to the accommodated persons by the staff does not meet their needs and thus directly endangers their health. The training of the staff for work with children with disabilities in the family-type accommodation centers for children or young people with disabilities is insufficient, which leads to the impossibility to react adequately in a crisis situation and even to identify one. Another troubling finding of the Ombudsman as the NPM is that, currently, a very small percentage of the persons accommodated at residential social services use services in the community, which is a prerequisite for potential difficulties when they are moved to new social services and an obstacle to their future successful inclusion in society.

In this regard, the Ombudsman as the NPM reiterates its opinion that the deinstitutionalisation process, which started as early as 2010, is too slow.

Subject to annual monitoring by the NPM are also special homes for temporary accommodation of foreigners (SHTAF) at the Migration Directorate of the Ministry of Interior and the registration and reception centers of the State Agency for Refugees (SAR) under the Council of Ministers. Eight institutions for asylum seekers were inspected in 2021 with nearly 4,470 foreign citizens without any status in the Republic of Bulgaria. For the second year in a row, the Ombudsman as the NPM continued to identify a number of problems. The placement of unaccompanied foreign children in the SHTAF needs to be stopped and interinstitutional cooperation between the SHTAF and the Social Assistance Agency regarding unaccompanied children detained in the SHTAF needs to be improved. In regard to the representation of unaccompanied refugee children in 2020, amendments to the Asylum and Refugees Act were proposed. The Ombudsman expressed an opinion regarding the proposal to amend Article 25 of the Asylum and Refugees Act and supported the legislative efforts to ensure the rights of



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unaccompanied children, emphasizing the importance of the institute of representation and the use of the National Legal Aid Bureau to represent unaccompanied children. The Ombudsman is seriously concerned that this systemic problem remains unresolved, despite repeated recommendations over the years to the Migration Directorate of the Ministry of the Interior and the Social Assistance Agency.

**THE OMBUDSMAN IN DEFENCE OF PERSONS DETAINED IN INSTITUTIONS IN
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In the capacity of the National Preventive Mechanism (NPM), the Ombudsman performs annual monitoring of the places where people deprived of liberty are accommodated or where people detained in custody following an act or with the consent of a state authority are accommodated, places they cannot leave of their accord, in order to ensure protection of such persons against torture and other forms of cruel, inhuman or degrading treatment or punishment.

In 2021, despite the complicated epidemic situation, the Ombudsman as the NPM carried out inspections of 64 sites. The main purpose of the inspections was, first of all, to assess the anti-epidemic measures taken in the closed institutions, as well as to monitor the implementation of the recommendations given during previous visits.

In 2021, the trend for a large number of inspections in the places for serving sentences to the Ministry of Justice continued - prisons (7), prison dormitories of open (11) and closed (7) type. 6 arrests were also checked. The general critical finding in this sector is related to the identification of systemic problems in the medical care of prisoners, such as shortage of medical specialists in almost all prisons, ignoring the complaints of prisoners, untimely release of external specialists for diagnosis and treatment, rude treatment of prisoners by medical professionals, etc.

Compared to 2020, the inspections in the centers for accommodation of refugees and migrants have significantly increased - in the inspected a total of 8 institutions for asylum seekers are covered nearly 4470 foreign citizens without status in the Republic of Bulgaria. For the second year in a row, the Ombudsman, as the NPM, continues to identify a number of problems - to stop the placement of unaccompanied foreign children in the SCTAF and to improve inter-institutional cooperation between the SCTAF and the DSP on unaccompanied children detained in the SCTAF.

The Ombudsman notes with particular concern the acute problem in the conditions of the ongoing epidemic crisis with exceeding the capacity of the Security Zone in the refugee center in the capital's "Military Ramp" suburb - an inspection in August 2021 identified 221 registered unaccompanied minors with a capacity of the safe area of 100 children.

In 2021, a total of 9,128 people received protection from the NPM. Throughout the year, in an emergency epidemic, the Ombudsman continued to provide direct public access to the mobile

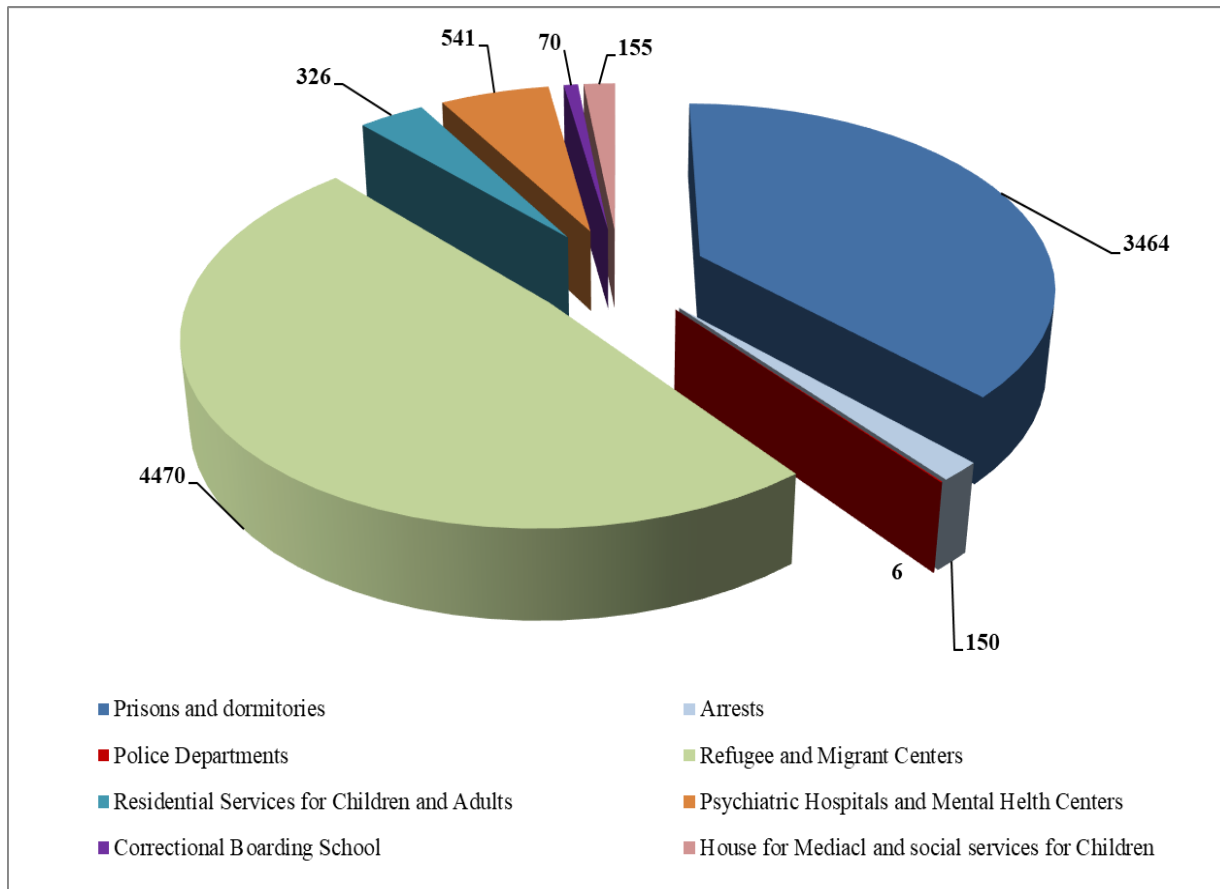


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phones of NPM experts in order to effectively protect the rights of all citizens residing in closed institutions.

Number of persons covered by NPM inspections in 2021



Source: Statistics of the Ombudsman of the Republic of Bulgaria

The third significant group of persons covered by the Ombudsman's inspections acting as the NPM, includes **people with mental illness** - a total of 541 persons accommodated in 5 psychiatric hospitals and 1 mental health center are covered by the inspections in 2021. Inpatient psychiatric care suffers insufficient funding and lack of staffing. The budget is a key tool for managing psychiatric hospital activities to respect patients' rights. There are low quality food, low medicine (generic treatment) and uncommitted repairs in hospitals. Chronic shortages of medical and non-medical professionals in hospitals, low pay, overcrowding and staff burnout have been unresolved issues for years and all of this reflects on the quality of patient care.

No less important are the rights of children and adults accommodated in residential services - with a total of 10 institutions inspected in 2021 (with 326 people accommodated), critical findings



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regarding the recurring worrying trend of poor quality care are still valid. children with disabilities in family-type centers.

Unfortunately, the Ombudsman's annual report on the 2021 NPM highlights other persistent problems. A total of 106 recommendations were sent to various authorities and institutions in all of them, and the undertaking of concrete measures to improve the conditions was monitored.

In 2021, **for the first time, the ombudsman exercised his right to a constitutional complaint regarding the rights of persons detained as defendants.** Pursuant to Article 150, paragraph 3 of the Constitution, the Ombudsman of the Republic of Bulgaria addressed a request to the Constitutional Court (CC) to declare unconstitutional the provision of Art. 64, para 2, second of the Code of Criminal Procedure (CPC).

The constitutional judges supported the motives of the ombudsman that the provision of art. 64, para 1, sentence second of the PPC violates the right to protection of citizens under Article 122 in conjunction with Article 56 of the Constitution. The right to protection guaranteed by the latest constitutional norm is comprehensive. It finds specific manifestations in various spheres of public life and in particular in the various branches of law.

The Ombudsman's opinion is that the additional sentence two, which allows remote participation of the accused in taking pre-trial detention in pre-trial proceedings, is contrary to the constitutionally guaranteed right to protection of every citizen, proclaimed in Article 56 of the Basic Law in connection with the right to protection at all stages of the process according to Article 122, as well as two other basic rights of citizens - the right of persons not to be subjected to torture, cruel, inhuman or degrading treatment, guaranteed in Article 29, para 1 of the Constitution, and the right to personal liberty and inviolability, proclaimed in art. 30, para 1 of the Constitution.

The automatic and immediate trial of persons detained on criminal charges is an important procedural guarantee for protection against illegal and arbitrary detention, but such a guarantee is the immediate acceptance by the court of the person's explanations in the context of the constitutional right to protection. to exercise all fundamental rights.

The Constitutional Court, developing its practice, has come to the conclusion that the constitutional right to protection can be realized in its entirety only if the road to court is not closed, as only adversarial public litigation with equality of disputing parties within the meaning of Art. . 121 of the Constitution can ensure the disclosure of the truth and the correct application of the law.

To these permanently established and consistently developed in the practice of the Constitutional Court provisions on the right to defense should be added the specific right of the accused to be physically brought before a judge during the initial taking of the measure of remand in custody.