



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

### **SUMMARY OF REPORT 2022**

#### **CONTENTS**

<b>THE CONVENTION.....</b>	<b>1</b>
<b>UN CAT IMPLEMENTATION IN BULGARIA 2022 .....</b>	<b>2</b>
<b>THE OMBUDSMAN IN DEFENCE OF PERSONS DETAINED IN INSTITUTIONS IN BULGARIA .....</b>	<b>4</b>

#### **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.



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

### **SUMMARY OF REPORT 2022**

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 2022**

The main recommendations of the Committee against Torture to the Republic of Bulgaria issued within the VIth Periodic Report continued to be valid in 2022.

The Committee expresses its concern that, even to this day, the Bulgarian legislation still does not contain a legal definition of “torture”, in the meaning of Article 1 of the Convention. Next, the Committee draws attention to the problems with 24-hour detention. The Bulgarian State should ensure that all basic legal guarantees for detainees are provided in practice, not just in law.

In 2022, the Ombudsman carried out inspections in four detention premises and nine regional departments of the Ministry of Interior. On the basis of the inspections, it can be concluded that the permanent problems in the 24-hour detention system continue to be relevant to this day, specifically: poor material and living conditions, lack of ventilation and natural light.

The Committee also notes the problem of excessive use of force (in particular in prisons in Sofia and Burgas) and in police detention premises. The Committee stresses the problems of healthcare in prisons, in particular: shortage of medical staff; difficult access to medicines; poor quality of medical examinations; limited access to psychiatric care; lack of special care regarding prisoners with physical and/or mental disabilities; lack of measures to address widespread drug use and related problems such as HIV and hepatitis.

In 2022, the NPM team carried out inspections in 5 prisons (in Lovech, Pleven, Plovdiv, Belene, Vratsa). Based on the findings, it can be concluded that the lack of medical staff in prisons is a systemic problem.

Other key recommendations made by the Ombudsman in relation to systemic problems in prisons are:

- Targeted funds should be allocated for the repair of the sanitary units and the sleeping premises of the inmates;



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

**SUMMARY OF REPORT 2022**

- To remodel the cells in such a way as to provide access to natural daylight while ensuring the privacy of those serving sentences of “life imprisonment” and “life imprisonment without parole”;

- To improve access to legal aid;
- To improve the awareness of detained persons about their rights;
- To provide medical examinations of prisoners under conditions of confidentiality, especially when registering cases of physical force;
- To undertake efforts to solve the problem with cockroaches and bedbugs in places of deprivation of liberty;
- To review the New List of permitted personal belongings, items and food products that prisoners can receive, use and keep with them in the designated for that purpose places.

Another important topic reflected in the Committee’s report is related to the problems of social institutions. In 2022, the Ombudsman, in her capacity as NPM, carried out 7 inspections in residential social institutions (homes). The Ombudsman has repeatedly stated in her reports that the homes do not meet any criteria for providing a quality social service for people with disabilities. To date, the problem with the right of free movement of the accommodated persons and contacts with the outside world is still relevant. Another worrying finding from the Ombudsman’s inspections is the lack of external social services. The offered social services (occupational therapy, psychotherapy, kinesitherapy) are conducted within the territory of the home, which creates prerequisites for additional isolation of the accommodated persons and makes it difficult for their future re-socialisation in society. Among the main recommendations made by the Ombudsman over the years are:

- All homes for adults with mental retardation, mental disorders and dementia should be closed by 2027;
- Until they are closed, the living conditions of the users should be improved, and the accommodation of new users should be terminated;
- No new social services in the building stock of the existing old-style homes for adults should be opened.

In regard to the protection of persons suffering from mental illnesses, in 2022, the Ombudsman requested the Constitutional Court to declare unconstitutional the provision of Article 158, paragraph 5, third sentence of the Health Act (promulgated, SG No. 70 of 2004; last amended and supplemented, No. 62 of 2022). With her request to the CC, the Ombudsman substantiated the contradiction of this provision with the principle of the rule of law (Article 4, paragraph 1 of the Constitution), the constitutional right to protection of every citizen at all stages of the process (Article 56 in connection with Article 122 of the Constitution), as well as the right to personal freedom and inviolability (Article 30, paragraph 1 of the Constitution). The Ombudsman’s arguments were accepted by the constitutional judges and the provision of Article



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

### **SUMMARY OF REPORT 2022**

158, paragraph 5, third sentence of the Health Act was declared unconstitutional by Decision No. 14 of 17 November 2022 in constitutional case No. 14 of 2022.

Next, the Committee draws attention to the problems related to the situation of persons seeking protection and migrants. The Ombudsman strictly monitors the respect of the rights of migrants who have requested or initiated a procedure, as well as of those who have received protection on the territory of the Republic of Bulgaria. In fulfillment of these functions, the Ombudsman carries out an annual independent monitoring of the special homes for temporary accommodation of foreigners at the Migration Directorate of the Ministry of Interior and the registration and reception centres of the State Agency for Refugees under the Council of Ministers. In connection with the unprecedented refugee crisis that arose after the outbreak of the armed conflict in Ukraine on 24 February 2022, amendments and additions to a number of provisions in the Asylum and Refugees Act were proposed. In the opinions sent by the Ombudsman to the National Assembly, special attention was paid to persons from vulnerable groups – children under the age of 18, unaccompanied children, pregnant women, single parents with minor children, elderly people and people with disabilities, mental disorders and other forms of disabilities. The Ombudsman has repeatedly emphasised in her opinions the need to build effective inter-institutional cooperation between the Ministry of Interior and the Social Assistance Agency in order to stop the practice of placing unaccompanied refugee children in the special homes for temporary accommodation of foreigners at the Migration Directorate of the Ministry of Interior.

### **THE OMBUDSMAN IN DEFENCE OF PERSONS DETAINED IN INSTITUTIONS IN BULGARIA**

In 2022, the Ombudsman as NPM carried out 58 inspections in prisons and prison dormitories, state psychiatric hospitals and mental health centres, refugee and migrant centres, detention centers and family-type accommodation centers for children and adults, with an **additional and specific focus** being also placed on the conditions for supporting persons with temporary protection status from Ukraine, as well as crisis centers for persons who have suffered from domestic violence and victims of trafficking.

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 type (7) and closed (2) type. Four arrests were also checked. The general critical finding in this sector is related to the lack of effective solution to several major problems: systemic deficits in the medical care of prisoners, continuing deficits with depreciated, obsolete and hygienically unreliable bedding inventory; unsolved problems with the presence of cockroaches and bed bugs in places of deprivation of liberty, etc.

Compared to 2021, there was a significant increase in the number of **inspections in detention premises within the structures of the Ministry of Interior**. This is based on the

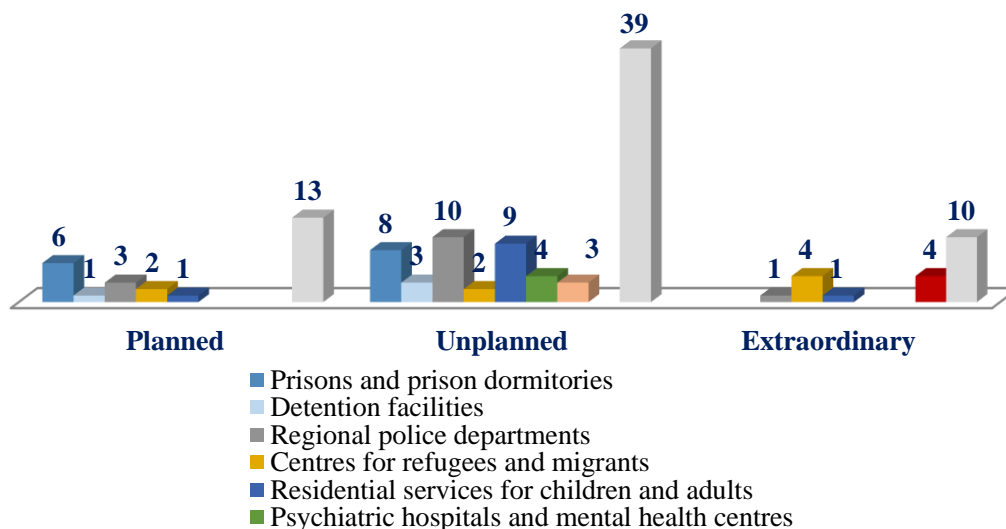


## MONITORING OF THE UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, UNHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN BULGARIA

### SUMMARY OF REPORT 2022

findings of the Ombudsman acting as NPM from the inspection in connection with the detention of three minors at the First Regional Department of Sofia Police Directorate in February 2022. Their parents or guardians were not informed about their detention in the building of the regional police department and they were not provided legal protection in violation of the Directive on procedural safeguards for children (2016/800/EU). As a result of the inspections, the Ombudsman, in her capacity as NPM, also found other recurring weaknesses in the system of 24-hour detention of persons at the Ministry of Interior, such as: absence of service premises, lack of access to ventilation and natural light, and outdated material facilities.

*Chart. Number of NPM inspections conducted by category of inspected body in 2022*



*Source: Statistics of the Ombudsman of the Republic of Bulgaria*

For yet another year, the Ombudsman as NPM emphasizes that **it is necessary to adopt a national policy and strategy for juvenile justice 2021-2030**. The efforts of the authorities should be fully focused on the rapid closure of institutions for children in conflict with the law and the establishment of a protected social system including the creation of a network of services (integrated services and educational, psycho-social and protective measures and support mechanisms) in relation to these children.

*In 2022, the Ombudsman of the Republic of Bulgaria, in her capacity as NPM, found a disturbing practice of violating the rights of children during police custody involving the completion of a declaration of waiver of the right to protection by a minor in violation of all*





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

### **SUMMARY OF REPORT 2022**

*international standards of the Council of Europe and the European Union. In her opinion, the Ombudsman clearly emphasizes that the first and most important condition to be taken into account is that the detention of a minor is permissible only as an exception. This possibility is provided for in the law as a last option from among several other less serious measures, which do not include restrictions on the minor's freedom and which should be applied in relation to minors. Where children are concerned, depriving them of basic human rights while in police custody is absolutely unacceptable. The Ombudsman categorically believes that legal protection of detained minors should be guaranteed.*

*The Ombudsman institution has consistently maintained that **the competent authorities must take timely action to bring legislation in line with the existing international standards in order to ensure effective access to justice for children and treatment that is appropriate to their age, development and needs.***

The recommendation that effective legislative action is needed to **transpose EU Directive 2016/800 on procedural safeguards for children who are suspected or accused in criminal proceedings in the Criminal Procedure Code** continues to be relevant.

In 2022, the **upward trend in the number of checks in refugee and migrant accommodation centres** persisted in response to the increased migration pressure from persons seeking international protection – 11,761 foreign nationals were covered by the checked accommodation institutions within the system of the Ministry of Interior and the State Agency for Refugees (SAR) without any status in the Republic of Bulgaria. For the third year in a row, the Ombudsman as NPM continues to identify a number of problems in the system for granting international protection:

- Unresolved problems with the setting up of a safe zone for unaccompanied minors outside the capital (at Registration and Reception Centre-Harmanli);
- Unresolved problems with the control of hygienic and sanitary conditions in the centers for accommodation of foreigners;
- Problems with access to dental and specialised health care, etc

The second largest group covered by the Ombudsman's inspections acting as NPM includes **people with mental illnesses**.

In 2022, **for the second time, the Ombudsman, in her capacity as NPM, exercised her right to a constitutional complaint, this time in connection with the rights of persons with mental illnesses**. Pursuant to Article 150, paragraph 3 of the Constitution, the Ombudsman of the Republic of Bulgaria appealed to the Constitutional Court (CC) to declare unconstitutional the provision of Article 158, paragraph 5, third sentence of the Health Act<sup>1</sup>. The contested provision

<sup>1</sup> (Supplemented, SG No. 110 of 2020, effective 30.06.2021)



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

### **SUMMARY OF REPORT 2022**

permitted participation of mentally ill and expert persons in proceedings for involuntary placement for treatment by videoconference.

In their decision on constitutional case No 14 of 2022<sup>2</sup> **constitutional judges supported the motives of the Ombudsman** on the unconstitutionality of this provision in contradiction to the principle of the rule of law (Article 4, paragraph 1 of the Constitution), the constitutional right of defence of every citizen at all stages of the process (Article 56 in connection with Article 122 of the Constitution), as well as the right to personal freedom and inviolability (Article 30, paragraph 1 of the Constitution).

*In 2022, the Ombudsman of the Republic of Bulgaria, in her capacity as NPM, was referred by the Bulgarian Helsinki Committee in connection with violated rights of people with mental illnesses. According to reports brought to the attention of the Ombudsman Institution, in practice, involuntary treatment placements are now routinely heard via Skype video conference calls, without asking anyone's consent, while the affected person usually participates in it from the mental health center in which he/she is treated after emergency placement and his/her lawyer is in the courtroom and has no contact with the person. This is an absolutely unacceptable situation, even more so when it refers to a vulnerable participant in the process, such as persons with mental disorders*

*It its judgment in that case, the CC established requirements to the right of defence which are also applicable to a judicial review in case of placement for involuntary treatment and the contested provision does not comply with them.*

Other disturbing findings in relation to the rights of people with mental illnesses are related to **non-started implementation of the National Strategy for Mental Health of the Citizens of the Republic of Bulgaria 2021-2030, permanently poor indicators of food, medicine, and unsatisfactory health care for patients in the inpatient psychiatric care facilities**. The consistent shortage of medical and non-medical specialists at hospitals, low pay, overwork and professional burnout of staff have not been resolved for years and all this reflects on the quality of patient care.

**The rights of children and adults accommodated in residential services** are no less important – with a total of 11 institutions inspected in 2022 (398 persons accommodated), the critical findings remain valid regarding the **persistent worrying trend of poor-quality care for elderly people and children with disabilities in family-type centres**<sup>3</sup>.

**Over the years, the Ombudsman, as National Preventive Mechanism, has repeatedly recommended acceleration of the deinstitutionalisation process, since long-term stay of**

<sup>2</sup> <https://www.constcourt.bg/bg/Acts/GetHtmlContent/f5ba49a4-651f-4028-b0cc-cfdb57c31849>

<sup>3</sup> <https://www.ombudsman.bg/>



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

### **SUMMARY OF REPORT 2022**

**disabled people in institutions violates basic human rights, and the homes themselves can be defined as places of deprivation of liberty.** However, there are still seven institutions accommodating more than 100 people (one home with 228 persons) located far away from community centers and hospitals, with a lack of specialists to care for them.

In 2022, a team of the Ombudsman in her capacity as NPM carried out seven inspections in residential social institutions of the old type (homes). Once again it was found that **the homes do not meet the criteria for providing quality social services for people with disabilities.** The accommodated people are not properly treated and their stay there is not only bad and humiliating, but their basic human rights are violated:

- The right to free movement and contacts with the outside world;
- The right to quality psychological and medical care;
- The right to privacy and quality sanitary and living conditions;
- The right to individual care.

*In regard to these findings of the Ombudsman, which unfortunately have been the same for the last ten years, it must be emphasised again that there is a direct breach of Article 16, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, namely: “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment”.*

In her reports, the Ombudsman as NPM has repeatedly noted **the negative finding of the apparent lack of will and vision to move residential care services into the community.** Instead, the opposite trend is observed – the facilities of the institutions remain the same, still far away from the municipal centres and in some cases without relevant infrastructure, being redeveloped with minimal funds to create sheltered housing and family-type accommodation centres. This leads to the practice of new services being actually located in the same building or in the yard of the respective resident service.

In 2022, the focus of the Ombudsman’s inspections as NPM of children’s institutions was on **crisis centres for children and women, who are victims of trafficking and violence.** Three social services were inspected.

Victims of violence and trafficking are groups with specific and complex needs related to their immediate protection, overcoming emotional crisis, social stabilisation, rehabilitation of the





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

### **SUMMARY OF REPORT 2022**

trauma and reintegration, after overcoming serious incidents and the consequences of them. This group needs quality and professionally provided social services not only to overcome the violent impact, but also to prevent subsequent incidents. Adults and children who have experienced the most common form of violence – domestic violence – have the greatest need of social services.

**The main problems** identified by the Ombudsman as NPM during inspections in crisis centres for children only are that some children do not meet the social service profile. There are children housed for runaways, burglaries, anti-social behaviour, sexual contact with criminals. Not only some children do not meet the social security profile, but the statutory residence period, which is not more than six months, is not respected, and this period is set only in extraordinary cases. Very often, children who are victims of violence and children who are perpetrators of anti-social acts, abusing narcotic substances and exhibiting aggressive behaviour towards the child victims are accommodated in one and the same place. Despite the fact that in both cases children are victims, the needs of the two groups of children are different, and work with them requires a different approach.

The Ombudsman's annual report as NPM for 2022 unfortunately consistently highlights other persistently unresolved issues:

✓ **Persistent underfunding and chronic shortage of personnel to ensure quality medical care and health care for persons in all categories at inspected facilities** – prisons, psychiatric hospitals, socio-pedagogical boarding schools, centers for refugees and migrants, as well as family-type accommodation centers for children and adults.

*It is known that there are only 13 crisis centers for women and children in Bulgaria, and they are not located in all regional centers. In 18 out of 28 regional centers there is no accommodation for victims of violence. The lack of places where victims of domestic violence can find shelter and protection seems to be an extremely serious problem. The situation as of December 2022 shows that there are significant differences between the regions of the country in terms of support to victims of domestic violence, as there are still entire regions that lack specialised services including crisis centers to support victims of domestic violence.*

*The Ombudsman has repeatedly noted that **urgent measures are needed for crisis centers to become an essential part of the network of services** that support victims and work at all levels, such as prevention, protection and rehabilitation. Opening of crisis centres is not the only solution to the problem of domestic violence.*

*The Ombudsman believes that it is extremely important to carry out thorough research and data collection on the needs of the people in the area for a social service before the social service planning process.*



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

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

**SUMMARY OF REPORT 2022**

✓ **Lack of budgetary funding for social activities in the places of serving sentences to the Ministry of Justice** – social work and reintegration of prisoners continues to be questionable in many of the prisons.

Regarding all of them, a total of 114 recommendations were sent to various authorities and institutions, and the implementation of specific measures to improve the conditions in the places of accommodation, detention or imprisonment was monitored.