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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Consideration of reports submitted by States parties under article 19 of the Convention

Combined fourth and fifth periodic reports of States parties due in 2008

Bulgaria*,**

[3 August 2009]

* The third periodic report submitted by the Government of Bulgaria is contained in document CAT/C/34/Add.16; it was considered by the Committee at its 612th and 614th meetings, on 17 and 18 May 2004 (CAT/C/SR.612 and 614). For its consideration, see CAT/C/CR/32/6.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Contents

I. Introduction

1. This report is a consolidated document containing the fourth and fifth periodic reports of the Republic of Bulgaria concerning the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The report has been prepared in accordance with the guidelines of the Committee against Torture regarding the form and content of periodic reports, as well as the Committee's General Comment No. 1 on the implementation of Article 3 in the context of Article 22 (refoulement and communications) (1996), and General Comment No. 2 on the implementation of Article 2 by State parties (2007).

3. The third periodic report of the Republic of Bulgaria was considered by the Committee Against Torture on 17 and 18 May 2004. The final conclusions of the Committee were issued on 11 June 2004.

4. Along with positive assessments, the Committee also noted certain outstanding issues regarding the provisions of the Convention that are in the process of implementation by Bulgaria.

5. The Government of the Republic of Bulgaria confirms its determination to continue to strictly fulfil the obligations arising from the Convention, and to ensure the necessary conditions for the effective prevention and counteraction of any and all violations of its provisions. The competent institutions in Bulgaria continue their efforts to address all emerging issues and take appropriate action in cases where such acts have been allowed to take place.

6. In this context, the Government will continue to cooperate with the Committee and take into account all its relevant comments and recommendations.

7. In the reporting period, the Republic of Bulgaria has continued its progress in building a free-market economy, further strengthening the democratic institutions, enhancing respect for human rights, the rule of law, and the promotion of civil society. In this context, Bulgaria has continued to successfully address the outstanding issues in connection with the implementation of the Convention's provisions (which are partly attributable to objective difficulties relating to Bulgaria's economic circumstances).

II. Information on new measures and results regarding the implementation of Articles 1–16 of the Convention

8. During the period under review, the Republic of Bulgaria undertook a series of legislative, administrative and other measures in accordance with Articles 1 through 16 of the Convention.

A. Article 1

9. *Article 5, paragraph 4* of the Constitution of the Republic of Bulgaria of 1991 provides that "Any international instruments which have been ratified by the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise."

10. Consequently, by virtue of *Article 5, paragraph 4* of the Constitution, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, including its Article 1, is expressly an integral part of the domestic legal order of the Republic of Bulgaria.

11. Capital punishment does not exist in the Republic of Bulgaria. It was abolished in 1998.

B. Article 2

12. Stringent legal safeguards against torture are provided in Bulgaria. *Article 29, paragraph 1* of the Constitution of the Republic of Bulgaria of 1991 explicitly prohibits torture: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation." (Chapter Two – Fundamental Rights and Duties of Citizens). Article 29, paragraph 2 states that "no one may be subjected to medical, scientific, or other experimentation without their voluntary written consent." Article 30 of the Constitution proclaims the right to liberty and inviolability of the person as a fundamental right of the citizens of the Republic of Bulgaria.

13. The Republic of Bulgaria is party to all international human rights instruments which guarantee the comprehensive and unconditional prohibition of torture, inhuman treatment and punishment. As a State Party to the International Covenant on Civil and Political Rights, Bulgaria is bound by its Article 7, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." Likewise, as a State Party to the European Convention on Human Rights, Bulgaria is bound by its Article 3: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

14. These international legal instruments, including the provisions of Article 7 of ICCPR and Article 3 of ECHR, also are an integral part of Bulgarian legislation by virtue of *Article 5, paragraph 4* of the Constitution.

15. Furthermore, the acts covered under Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are criminalized in the Penal Code of the Republic of Bulgaria as constituent elements of the criminal offences of ***coercion, threat*** and ***bodily harm***.

16. According to Article 287 of the Penal Code, any public official acting in an official capacity who, in person or through another person, employs unlawful means of coercion to obtain information, a confession, a deposition or a conclusion from an accused, a witness or an expert witness, shall be punished by imprisonment for a term of 3 to 10 years and by deprivation of the rights under Article 37, paragraph 1, subparagraphs 6 and 7 of the Penal Code (i.e. the right to hold a certain state or public office and the right to practice a certain profession or activity).

17. Procedural guarantees of the prohibition of torture are contained in the provisions of the Criminal Procedure Code, the Enforcement of Penalties Act, as well as in the entire Bulgarian criminal justice legislation. Secondary legislation is also of particular practical importance in providing guarantees for the prohibition of torture. Article 9 of Guideline No. Iz-2451 of the Minister of the Interior of 29 December 2006 on the procedure to be followed by the police upon detention of persons at the structural units of the Ministry of Interior, on the furnishing of premises for the accommodation of detainees and the order therein (promulgated in State Gazette #9/26.01.2007, in force from 27 February 2007), expressly prohibits any such acts: "The actions of police authorities shall exclude the commission, provocation or toleration of any act of torture, inhuman or degrading treatment or punishment whatsoever, or any act of discrimination against detainees." Moreover, Article 10 of Guideline No. Iz-2451 states that a member of the police force who has

become witness to the acts under Article 9, shall intervene to prevent or put an end to any such act and shall report it to his/her superior.

18. It would also be recalled that the Code of Conduct of the Police Officer was adopted and introduced into practice by order of the Minister of the Interior in October 2003. It is also placed on the web page of the Ministry of the Interior (www.mvr.bg).

19. The Code of Conduct contains explicit provisions aimed at preventing torture and ill-treatment.

20. Following are the relevant sections of the Code which was drafted with the active assistance of Belgian experts and the Council of Europe:

> Chapter Two, Section II:
>
> Paragraph 21: In performing his/her duties of service, a police officer shall respect the dignity of any person, and shall under no circumstances be allowed to commit, provoke or tolerate any act of torture, or of inhuman or degrading treatment or punishment.
>
> Chapter Three, Section IV:
>
> *Paragraph 77*: A police officer shall have no right, in any circumstances, to subject detained persons to torture, physical or psychological violence, or inhuman or degrading treatment.
>
> *Paragraph 78*: A police officer who has witnessed police violence in respect of a detained person shall intervene to stop such violence and shall report said violence to his/her superiors.
>
> *Paragraph 79*: A police officer shall protect the life and health of any detained person and, where necessary, shall allow for medical assistance to be provided to such person.
>
> *Paragraph 80*: A police officer shall provide a possibility for such detained person to exercise his/her right to legal counsel.
>
> *Paragraph 81*: A police officer shall provide a possibility for such detained person to inform a relative, loved one or a third party of the fact of his/her detention, except in cases as provided under law.

21. Considerable improvement was observed as regards detainees' contact with the outside world. Remand facilities have been equipped with separate rooms for visits, and detainees can benefit from two visits of up to 45 minutes each per month.

22. The Republic of Bulgaria has also ratified a number of international legal instruments of the United Nations and the Council of Europe, with direct or indirect relevance to issues relating to the prevention of torture, including the Convention on the Worst Forms of Child Labour (2001); the Supplementary Protocol to the Convention on the Transfer of Sentenced Persons (2004); the Second Supplementary Protocol to the European Convention on Mutual Assistance in Criminal Matters (2004); the European Convention on Transfer of Proceedings in Criminal Matters (2004); the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (2005); the Convention on Human Rights and Biomedicine (2005); The European Convention on Nationality (2006); the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (2006); the Council of Europe Convention on Action against Human Trafficking (2007), among others.

23. As mentioned above, pursuant to Article 5 (4) of the Constitution of the Republic of Bulgaria, these international legal instruments constitute an integral part of Bulgaria's national legislation, and take precedence over provisions of national law in contradiction with them.

24. The process of harmonization of Bulgarian law with the *acquis communautaire*, which started over ten years ago, also has contributed to the implementation of the goals of the Convention. Thus, for example, a project on "Civil Society in Support of Bulgaria's Sustainable Policy of Safeguards for Human Rights" has been implemented in partnership with the Dutch Human Rights Institute, the National Institute of Justice and the Bulgarian Lawyers for Human Rights Foundation. In April 2004, Bulgaria submitted a report on the conformity of Bulgarian legislation and practices to European standards with regard to the implementation of Articles 2 and 3 of the European Convention on Human Rights.

25. In relation to the implementation of its obligations under the Convention, during the period under review Bulgaria achieved substantive progress in bringing up to date its national criminal and other specialized legislation. The Penal Code alone has been amended and supplemented 23 times; the Criminal Procedure Code has likewise undergone numerous amendments. Furthermore, a new Criminal Procedure Code was adopted and entered into force on 26 April 2006, thereby bringing about a qualitative change in our criminal procedural legislation.

26. Since 2001, a total of 12 amendments have been made to the currently applicable Enforcement of Penalties Act (EPA), all aimed at strengthening guarantees for the humane treatment of convicted persons in the course of enforcement of a prison sentence meted out by a court of law.

27. Since the beginning of 2004, five amendments have been introduced to the Juvenile Delinquency Act (JDA), leading to qualitative improvement of its provisions.

28. Many of the above mentioned amendments have direct relevance to the implementation of the Convention as well as to issues addressed by the Committee in its conclusions in respect of the Third Periodic Report of the Republic of Bulgaria.

29. Several significant changes have been made in the domestic legislation relevant to the issue of counteracting torture in accordance with the Convention. The new, expanded and focused legislative framework, as well as practical actions in that respect, are aimed at eliminating conditions and possibilities for the commission of any acts banned by the Convention.

30. Corresponding amendments and supplements were made to the sectoral laws, including the Ministry of Interior Act (a new MoIA was adopted as of 1 May 2006), Attorney Act, Social Assistance Act, National Education Act, and State Liability for Damage Inflicted on Citizens Act.

31. In mid-2005, a new Extradition and European Arrest Warrant Act was adopted and came into force, as well as a new Protection of Persons under Threat in Relation to Criminal Proceedings Act (in force since May 2005, amended three times since, for the last time in March 2008).

32. Provisions of relevance to the prevention and punishment of torture are also contained in the newly-adopted Judicial System Act (in force as of 10 August 2007), the Administrative Procedure Code (in force as of 1 January 2006), the Legal Assistance Act (in force since late 2004, amended October 2006), as well as the Assistance and Financial Compensation to Crime Victims Act (in force since 2007).

33. Amendments were also made to the Constitution of the Republic of Bulgaria; among those, of particular importance are some to its section dealing with the judicial system.

34. A review of the main new provisions in laws and other statutes that contain safeguards for prevention or counteraction of torture is provided below.

35. In this context a major positive development is Article 4 (2) of the Penal Code which provides the possibility in principle for handing a Bulgarian national (including one who has committed an act of torture) over to a foreign state or international court of justice for purposes of criminal prosecution.

36. The penalty of probation was introduced in the General Provisions of the Penal Code in 2002, as an alternative to the penalty of imprisonment (Articles 42a and 43a of the Penal Code). In the Special Provisions, probation is prescribed as a penalty for a significant number of offences constituting a relatively minor threat to the public. Also since 2002, the possibility has been provided for convicted repeat offenders serving a prison sentence to be released early (Article 70 (2) of the Penal Code).

37. The special part of the Penal Code now provides for increased liability for crimes against the individual, against human rights, for crimes constituting abuse of office. In compliance with the relevant international legal instruments, towards the end of 2002, a new Section IX on Human Trafficking was introduced into Chapter Two (Articles 159a through 159c).

C. Article 3

38. The competent Bulgarian authorities implement Article 3 of the Convention in the context of General Comment No. 1, adopted by the Committee against Torture in 1996.

39. The conditions and the procedure for granting special protection to aliens seeking protection in the territory of the Republic of Bulgaria, as well as their rights and obligations, are laid down in the Law on Asylum and Refugees (LAR), in force from 1 December 2002.

40. Following its adoption, the Law has been amended three times, with the latest amendment coming into force as of 1 January 2008. The Law differentiates between various procedures instituted in response to a status application, while providing safeguards for the rights of aliens in relation thereto.

41. The principle of non-refoulement and that of Article 3 of the Convention are enshrined in *Article 4 (3) of LAR*: "An alien who has entered the Republic of Bulgaria to seek protection or who has been granted protection may not be returned to the territory of a country where his/her life or freedom is threatened due to his/her race, religion, nationality, membership of a specific social group or political opinion and/or confession, *or where he/she faces a threat of torture or other forms of cruel, inhuman or degrading treatment or punishment*."

42. According to Article 4 of LAR, any alien may request to be granted protection in the Republic of Bulgaria in accordance with the provisions of this Law. The procedure is initiated with the submission of a written application to the President of the Republic of Bulgaria, or to another state authority, which must forward it forthwith to the President (Article 58). From that moment, the alien is protected in application of the principle of non-refoulement.

43. According to Article 48 (1) of LAR, the Chairperson of the State Agency for Refugees (SAR) is authorized to grant, deny, withhold and lift refugee status and humanitarian status in the Republic of Bulgaria. Until the decision of the Chairperson of SAR has come into effect, coercive administrative measures, such as "annulment of the right of residence", "forced transfer to the border under police escort", "expulsion" and "prohibition to enter the country" shall not be enforced (article 67 (1) of LAR).

44. LAR defines in a more precise manner the grounds for denial, lifting and withholding of different types of protection and for termination of proceedings for granting a status, with a view to achieving full compliance with international standards. Article 16 of LAR, which had been criticized by the United Nations High Commissioner for Refugees, has since been repealed.

45. In cases where the Chairperson of SAR has decided to deny refugee status or turn down an application, he/she shall submit an opinion on the *safety* of the country to which the alien is to be returned.

46. Special treatment is provided in respect of vulnerable categories of aliens, whereby officials working with those are required to have additional qualification. Those requirements are introduced pursuant to novel legal provisions (e.g. LAR Article 30a, 39 (3), inter alia), which comply with the provisions of Part I of the Convention against Torture.

47. The Law contains detailed provisions regulating the reunification of families of aliens who have been granted refugee or humanitarian status. The standards of Directive 2005/85/EC with regard to interviewing asylum seekers are reflected in the new texts of LAR.

48. By Decree No. 332 of 28 December 2007, the Council of Ministers of the Republic of Bulgaria adopted an Ordinance on the Responsibility of, and Coordination between, Government Institutions Performing Functions Relevant to the Implementation of Council Regulation 343/2003 EC Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National, and Council Regulation 2725/2000 EC Concerning the Establishment of 'Eurodac' for the Comparison of Fingerprints for the Effective Application of the Dublin Convention.

49. With the entry into force of the Treaty on the Accession of the Republic of Bulgaria to the EU, the Dublin Convention and the Eurodac Regulation, which are directly applicable in all Member States, have become an integral part of Bulgaria's domestic legislation. Therefore, the new Section Ia of LAR, Chapter Six introduces provisions regarding the competent national authority and the legal acts issued and enforced thereby; the initiation of proceedings under the Dublin Convention and on the merit of a case; transfer of aliens and coordination between the State Agency for Refugees and the Republic of Bulgaria's services for administrative control in respect of aliens. The latter subject is to be regulated more thoroughly by an ordinance to be issued in due course.

50. The law provides for expanded judicial control over the decisions of the Chairperson of the State Agency for Refugees (SAR). The Sofia Administrative Court has sole jurisdiction in respect of cases against decisions adopted under Dublin proceedings since the decision-making authorities are within the perimeter of the SAR central administration.

51. Subject to a person's clear statement, made before officers of the border police, of willingness to be accorded status under LAR, this person's application will be forwarded to the competent SAR authorities.

52. During the period between 1 January 2004 to 31 December 2007, a total of 394 aliens who had committed border violations and have subsequently requested status under LAR have been referred to SAR. Their numbers by year are 59 for 2004, 34 for 2005, 35 for 2006 and 266 for 2007. The largest number of such applicants consisted of citizens of Iraq, followed by Palestinians and Afghans.

53. In practical terms, aliens seeking or already granted protection who claim that they had been subjected to and suffered torture in their countries are covered both by the general health care system and by a specialized rehabilitation centre for victims of torture, with

which SAR has an agreement of cooperation. As for the theoretical possibility for an officer of SAR to commit acts of torture, such officer shall become subject to administrative and penal liability in accordance with the existing procedure.

D. Articles 4–16

54. Amendments to Article 287 of the Penal Code, introduced in 2004 and 2006, respectively, most fully correspond to the Convention's requirement for criminalizing the act of torture. In its present wording, the text reads as follows: "An official who, in the course of, or in relation to, performance of his/her duties of service, whether acting on his/her own or through another agent, has committed unlawful coercive actions against a suspect, witness or expert witness for purposes of extorting from said person a confession, testimony, expert conclusion or information, shall be punishable by three to ten years' imprisonment and stripped of rights under Article 37 (1) subparagraphs 6 and 7."

55. The currently applicable Criminal Procedure Code (CPC) contains a number of principles, categories and institutions aimed specifically at the prevention of torture.

56. Along with the right of the accused and of any other persons involved in criminal proceedings to legal counsel (Article 15), the presumption of innocence (Article 16), and the principle of trial within a reasonable time (Article 22), Article 17 also enshrines the basic legal principle of the inviolability of the human person. According to that principle, no measures of coercion may be instituted in respect of persons involved in criminal proceedings, except in cases and subject to a procedure provided by law.

57. The CPC also states that no one may be detained for more than 24 hours without a court order. The detaining authority is mandated to immediately notify a person identified by the detainee of his/her detention.

58. All provisions relevant to the terms of custody or bail in respect of persons accused under trial cases of a general nature are also aimed at the prevention of torture.

59. Under Articles 62 (2), 64 and 65 of the CPC, the measures of house arrest or custody in the pre-trial phase shall be decreed by the relevant trial court, and the implementation of such measures is subject to judicial supervision. Referral of the accused person for psychiatric evaluation in the pre-trial phase is also subject to a court decision (Article 70).

60. In general, any procedural actions restricting or otherwise affecting the rights of persons involved in criminal proceedings, e.g. forced medical treatment (Article 427 and following), stricter regime of imprisonment (Article 445 and following), replacement of the penalty of probation with imprisonment (Articles 451 and 452), or transfer of convicted felons (Article 453 and following), may only be performed subject to a court order.

61. Safeguards against torture are also contained in the provisions of the CPC regarding the burden of proof. Thus, the prosecution's case and the verdict cannot be based solely on the accused person's confession (Article 116 (1)). Under the section dealing with interrogation, the figure of 'covert witness' (Article 141) is introduced as one of the main methods of establishing facts. In addition, no actions are allowed in the course of a person's examination that are degrading or dangerous for said person's health (Article 158 (1)); and an investigative experiment is only allowed subject to the condition that it is not degrading for the persons involved in it and does not pose any danger for their health (Article 167).

62. Further safeguards in that respect are the special rules applying to trial of minors (Articles 385 to 395); the provisions of delayed enforcement of a penalty in cases of grave illness or pregnancy (Article 415 (1) and (2)); the possibility of renewal of criminal trial in cases where a violation of the European Convention on Human Rights of substantial significance for the outcome of the trial has been established by force of a decision of the

European Court of Human Rights (Article 422 (1), subparagraph 4); the possibility for refusal to enforce a sentence issued by a foreign court where there are sufficient grounds to believe that such sentence has been handed down or aggravated for reasons of race, religion, nationality or political affiliation or where the enforcement of such sentence comes in conflict with international obligations of the Republic of Bulgaria (Article 464 (4) and (5)).

63. The new provisions of the Juvenile Delinquency Act (JDA), introduced since 2004, expand the range of the relevant government agencies and public institutions, as well as their prerogatives for ensuring a humane and fair treatment of underage offenders, especially those who are not criminally liable.

64. Amendments were made to the JDA in fulfilment of the National Strategy for Prevention and Counteracting of Juvenile Delinquency and Crime, adopted in accordance with Decision No. 17 of the Council of Ministers (2003). They correspond to the part of the Convention on the Rights of the Child concerning respect of the best interests of the child, in terms of the creation of laws, procedures, bodies and institutions and the adoption of measures with regard to children offenders without resort to a court of law, or, in cases where they are brought to court, about guaranteeing their right to fair trial and due process and their right to appeal before a superior competent, independent and impartial institution, or a superior court.

65. The latest improvements to the Juvenile Delinquency Act have resulted in a more elaborate and focused procedure preceding the actual hearing of a juvenile re-education case, while substantially altering the legal procedure and court proceedings themselves. The court session takes place subject to a specifically adapted procedure which corresponds in general terms to the criminal trial procedure prescribed under CPC. In addition, a new appeals regime and procedure have been provided in respect of court decisions whereby the relevant juvenile re-education measure is imposed. The law provides that the most severe re-education measures, namely, placement of a juvenile in a socio-pedagogical institution or in a re-educational boarding school, can only and exclusively be imposed by a court of law, whereas the actual placement of the juvenile person in such institutions is to be carried out by officers of the Ministry of Education and Science. The Act also imposes a restriction on the term of placement of minors and underage persons in such special schools.

66. In the period under review, in compliance with its international commitments, the Republic of Bulgaria continued its review of the relevant legislative and statutory framework and made the following amendments to its penitentiary legislation: a number of provisions were included in the Enforcement of Penalties Act in 2002 aimed towards improving the regime of enforcement of the penalties of imprisonment and life imprisonment; a Prison Economy Fund was created; the de-militarization of prison staff was completed; inmates have been given the right to submit complaints and petitions to human rights bodies under the UN and the Council of Europe, which the prison administration has no right to open and check; prison labour has been regulated in accordance with the principles of the free-market economy; provisions were included in the law to ensure religious support for prison inmates, etc.

67. Special mention is due to Article 2 (2) of the Enforcement of Penalties Act, which explicitly provides that the enforcement of a penalty cannot have as its aim the physical suffering or degradation of the convicted person. This basic principle is not only provided for by the relevant legislative text but is also applied with respect to the enforcement of any and all types of penalties, including life imprisonment or life imprisonment without parole.

68. Also, the Rules and Regulations on the Implementation of the Enforcement of Penalties Act have been improved by two rounds of amendments and supplements, in 2004 and 2006 respectively.

69. A new Ordinance No. 12/2007 regulates the provision of penitentiary medical services. Another new Ordinance No. 5, dated March of 2006, lays down the terms, conditions and procedure for prison labour.

70. Since September 2006, the Bulgarian Government has undertaken a number of steps to amend and supplement the Enforcement of Penalties Act (EPA), in connection with the adoption of a comprehensive concept with respect to the penal policy of the Republic of Bulgaria.

71. Pursuant to Executive Order of the Minister of Justice dated 27 September 2006, a Working Group was established and tasked with drafting a bill for amending and supplementing the EPA. In the course of the debate on that draft, the conclusion was arrived at that an entirely new EPA was needed. In January 2008, the terms of reference of that Working Group were changed and it was tasked with drafting a bill for an all-new Enforcement of Penalties Act. The composition of the Working Group was expanded to include members of the Legislation Council Directorate, the General Directorate for Enforcement of Penalties, the General Directorate for Security and Crime Prevention; the Civil Action Initiative Fund and the Office of the Ombudsman.

72. In relation to the adopted penal policy concept, in September 2007, an Advisory Council for Criminal Law Policy was created under the Minister of Justice. In February 2008, the new EPA bill drafted by the Working Group was submitted to the said Advisory Council for an opinion. The bill is now undergoing discussion and pending clearance with the relevant institutions.

73. In essence, the aim of the new EPA is to improve and update the statutory framework for all activities pertinent to the enforcement of penalties, raising effectiveness in the treatment of convicted persons, guaranteeing in full their rights and liberties while attaining greater transparency and higher professionalism in penalty enforcement and the effective implementation of international standards.

74. Article 3 of the proposed draft for the EPA bill enshrines, as an underlying principle, a strict and explicit ban on torture, in fulfilment of the relevant recommendation on the part of the Committee. Article 3 provides as follows:

> "(1) Convicted persons may not be subjected to torture or to cruel or inhuman treatment.
>
> (2) Torture or cruel or inhuman treatment shall be understood as denoting:
>
> (a) Any action or omission that causes physical pain or suffering, other than cases of use of force, auxiliary devices or weapons provided for herein;
>
> (b) Deliberate placement in adverse conditions of imprisonment, amounting to shortage of living space, food, clothing, heating, lighting, ventilation, medical service, conditions for exercise of the locomotory system; continuous isolation without the possibility of human communication, as well as other deliberate actions or omissions as may harm the human health;
>
> (c) Humiliating treatment that degrades the convicted person, forcing him/her to perform or sustain actions against his/her will, causing a feeling of fear, vulnerability or inferiority; (3) torture or cruel or inhuman treatment shall be understood to denote actions or omissions as per paragraph 2, performed by an officer or any other person incited or abetted by an officer through overt or tacit consent."

75. It should also be noted that efforts will continue to improve and streamline the system of enforcement of penalties, especially those related to restricting the freedom of movement or choice of residence. Thus, the Strategy for Development of Penitentiary

Facilities in the Republic of Bulgaria (2009–2015) conforms to both domestic and international regulations and standards in the area of penalty enforcement, including the United Nations and the European Conventions against torture.

76. Since 1 May 2006, a new Ministry Interior Organic Act has been in force, replacing the previous act which had been adopted in 1998. Its enactment was followed by the adoption of Rules and Regulations on its Implementation, as well as by the relevant ordinances and other internal statutory documents. All of these build further on the tendency towards radical change in the conceptual basis regarding the purpose of the MOI bodies and institutions.

77. Structural changes included demilitarization of the tenured staff, which is both an indication and a further guarantee that the Ministry personnel shall perform their duties solely in service to society. Non-governmental organizations are given an opportunity to exercise public control over the functioning and operation of MOI bodies. By virtue of the new statutory documents, the protection of the rights and liberties of citizens and respect for their human dignity are established as the core principle of MOI's operation, and the protection of the life, health and property of citizens, as its main task. In performing their duties of service, police officers are authorized to use physical force and auxiliary devices solely where such duties of service cannot be discharged in any other way, and only in very specific cases (Article 72). The use of such means of coercion is allowed, as a rule, following due warning (Article 73). The use of firearms is explicitly restricted to the possible minimum as a measure of last resort and is defined as admissible solely in cases where the duties of service are deemed to be of exceptional importance and cannot be performed in any other way (Article 74).

78. Since mid-2008, there has been an ongoing process of structural change in the MOI, to be followed by corresponding change of personnel. The beginning of this process was laid by the adoption of a law on the creation of the State Agency for National Security (SANS) and the removal of the National Security Service from the MOI and its inclusion in SANS. MOI is responsible for policing and fire protection and these two activities were structured and configured with amendment and supplement to the Ministry of Interior Act, adopted July 2008. Also of relevance to the Convention are the legal possibilities, introduced by way of said amendments, for improving the mechanism of response and dismissal of officers who fail to contribute to the effective performance of the functions of the Ministry or who have a track record of misconduct. The newly established Internal Security Directorate is directly subordinated to the Minister and is to perform internal control on the officers' performance, including for prevention of torture.

79. Further to the 2008 amendments to the MOIA, the position of police investigator was introduced. This is aimed at expanding the range of investigating authorities and ensuring the timely, lawful and efficient investigation in the pre-trial phase.

80. Another indication of the substantive changes in the MOI operation are the numerous newly-adopted pieces of secondary legislation that provide additional specificity and a more focused definition of the duties of MOI officers, in accordance with the changing conditions: Ordinance No. 13-1011/04.07.06 on the professional training of MOI personnel; Ordinance No. 13-1457/28.08.07 on the terms, conditions and procedure for involvement of members of the public and non-governmental organizations to voluntarily assist the National Police Service in the performance of its statutory duties; Ordinance No. 13-1187/26.06.07 on the procedure of registration with the police; Ordinance No. 1395/26.09.06 on the organization, functioning and operation of facilities for temporary accommodation of adults; Ordinance No. I-13/29.01.04 on the procedure for temporary accommodation of aliens, and the organization and functioning of special facilities for the accommodation of aliens.

81. Legislative changes have also been made in the field of forced psychiatric treatment, as prescribed by a court of law, with a view to prevent actions against mentally infirm persons that are forbidden under the Convention. A new Health Act has been in force as of 1 May 2005, and it was amended 21 times by February 2008. Chapter Five of said Act, entitled 'Mental Health', was drawn up jointly by the Ministry of Health Care (MHC) and the Bulgarian chapter of Helsinki Watch. Of the 20 articles of said Chapter Five, special reference is made to Article 147, which states that "No one can be subjected to medical procedures for diagnosing or treating mental disorders, except subject to terms, conditions and procedure as defined by law" (paragraph 1). The text also prescribes that "No evaluation seeking to establish the existence of a mental disorder shall be based on family, professional or other conflicts or on data regarding a mental disorder suffered in the past" (paragraph 2).

82. Alcohol abuse is no longer on the list of mental disorders for which forced treatment is to be sought or prescribed by a court of law. Among the basic principles of the treatment of persons with mental disorders belong, in particular, the principle of minimum infringement on personal freedom and respect for the rights of the patient, as well as compliance with humanitarian principles and norms in the conduct of treatment and the patient's social adaptation (Article 148 paragraphs 1 and 5).

83. These principles were further developed and given focus in the provisions of the Rules and Regulations on the Implementation of the Health Care Act, and in Ordinance No. 1/11.01.2007 on the terms, conditions and procedure for conducting medical activities related to the treatment of persons with mental disorders. Of considerable relevance to the subject matter are another four pieces of secondary legislation, namely Ordinance No. 1 on the procedure of instituting measures for physical restraint in respect of patients with diagnosed mental disorders (effective July 2007); Ordinance No. 16/13.05.2005 on forensic psychiatric evaluations relevant to the forced hospitalization and treatment of persons with mental disorders; Methodological Guidelines on Care for Persons with Grave Mental Disorders approved by Order No. РД09-531/02.11.2006; Ordinance No. 24/07.06.2004 on the establishment of a medical standard of 'Psychiatry.' It should be underscored that all pieces of secondary legislation relevant to the protection of rights of persons with mental disorders are in compliance with the relevant recommendations of international and Bulgarian human rights organizations.

84. For the purpose of improving the welfare of persons with mental disorders, in 2006 a Framework Agreement was signed for cooperation between the Ministry of Health Care and the Ministry of Labour and Social Policy (MLSP) to coordinate activities pertinent to social assistance to persons with mental disorders and social dysfunction.

85. Issues relating to the prevention of torture and other cruel, inhuman and degrading treatment or punishment in the field of social welfare in Bulgaria are also regulated. Pursuant to Section 37 of the Transitional and Final Provisions of the Law on Amending and Supplementing the Social Welfare Act, the existing social assistance establishments supported by the state or municipal budgets, including institutions for children with disabilities, were transferred in early 2003 to the authority of the mayor of the respective municipalities, which also became the employer of their staff.

86. By virtue of the amendments to the Public Education Act of 1 January 2007, the state and municipal social service providers, namely, homes for children deprived of parental care, were transformed from auxiliary bodies within the public education system into "children's homes", specialized institutions providing social services.

87. The Ordinance on the Criteria and Standards for Social Services Provided to Children sets forth the requirements for providing a safe and supportive environment for

raising and bringing up children and for the protection of their interests, as well as for ensuring higher quality and accessibility of social services.

88. The Convention assigns certain obligations to the State with regard to preventing any instances of torture in respect of the most vulnerable part of society, namely, children.

89. The Child Protection Act (CPA) regulates the rights, principles and measures for the protection of children (natural persons aged under 18), identifying the relevant state and municipal bodies and the interaction among them in performing activities pertinent to child protection, as well as the involvement of natural persons or legal entities in such activities (Article 1 (1)). The state policy of child protection is carried out on the basis of a National Strategy for the Child, adopted by the National Assembly upon the proposal of the Council of Ministers, and formulated in compliance with the basic provisions of CPA. In implementing said National Strategy, the Council of Ministers has adopted a National Programme, jointly proposed by the Minister of Labour and Social Policy and the Chair of the State Agency for Child Protection (Article 1 (3)).

90. Article 4 of the Child Protection Act provides a list of 12 protective measures, including temporary measures for protection in certain cases and subject to the conditions set out in Article 12 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. The competent child protection bodies are the Chair of the State Agency for Child Protection and the administration supporting him/her in the discharge of his/her duties; the Social Assistance Directorates; the Minister of Labour and Social Policy; the Minister of Interior; the Minister of Education and Science; the Minister of Justice; the Minister of Health Care and the mayors of municipalities (Article 6).

III. Administrative measures related to the implementation of Articles 2–16 of the Convention

91. During the period under review, the Council of Ministers in its entirety, as well as individual institutions such as MOI, the Supreme Cassation Prosecutor's Office, the Ministry of Justice, the Ministry of Health Care, the Ministry of Labour and Social Policy, the State Ombudsman of the Republic of Bulgaria, as well as the State Agency for Refugees under the Council of Ministers, have taken actions towards fulfilling their obligations under Articles 2 to 16 of the Convention. Such actions were carried out in implementation of common concepts, strategies, programmes and other governance documents adopted by the Council of Ministers, or those adopted by the relevant line ministries and institutions and concerning the respective sphere of social governance.

92. As has also been pointed out in previous reports, MOI strives for continuous improvement of the living conditions in pre-trial detention facilities. This is an issue that has been specifically raised by the Committee. The process of improving conditions in police detention facilities has been prioritized, especially in recent years.

93. Pursuant to the Constitution and the Criminal Procedure Code, police detention cannot exceed 24 hours, or 72 hours, if carried out on the authority of an arrest warrant issued by a prosecuting attorney, prior to the arraignment of the accused person before a court of law and the imposition of custody by said court. In this context, the official documentation pertinent to the preliminary arrest is brought in line with the relevant provisions of the domestic and international legislation, mostly with a view to the prevention of torture.

94. Detainees are provided with access to legal counsel; they are guaranteed medical service and food; and their loved ones are notified about their status and condition.

95. Most of the detention facilities used for persons in respect of whom auxiliary police devices have been used are brought up to a condition that would not cause discomfort or a perception of inhuman or degrading treatment on the part of the detainees.

96. Reliable control is exercised with respect to detention facilities observing the rights of detainees in relation to their registration, as well as those arising from internal rules of procedure.

97. During the period under review, measures have been undertaken to comply with the recommendations of international experts for the prevention of torture, inhuman or degrading treatment or punishment, and for improving the state and condition of detention facilities. The emphasis now is mainly on issues that have not been resolved in full or in a satisfactory manner. These relate mostly to improving the physical environment in detention facilities by providing better living conditions for detainees, as well as ensuring the requisite capacity of the available premises, or building new ones for detention of persons in accordance with international standards.

98. There are still difficulties, however, in terms of the shortage of funding for renovation of existing facilities, construction of new ones, financial support to enable the staff to run the facilities and serve the detainees, limited allocation for telephone calls and the absence of legal counsel at detention facilities.

99. To address some of the above-mentioned, as well as other problems arising in connection with the detention of persons in police custody, and to prevent instances of torture, MOI has issued a detailed Guideline No. Из-2451, effective 27 February 2007. A similar Guideline No. И-3/13.09.2006 had also been issued by the Ministry of Defence in connection with the detention of persons by regional bureaus of the Military Police and Military Counterintelligence Service.

100. In both Ordinances, Article 9 explicitly states that no actions of the relevant detaining authorities should include commission, provocation or toleration of any act of torture, inhuman or degrading treatment or punishment, or acts of discrimination in respect of detainees. Article 10 states and prescribes that an officer who has witnessed unwarranted use of physical force, or provocation or toleration of any act of torture, or inhuman or degrading treatment of detainees, is mandated to interfere in order to prevent or stop such an act, of which said officer is also obligated to notify his/her superiors without delay.

101. A great deal of problems related to the detention of persons in the relevant detention facilities should be addressed in accordance with the norms of the Transitional and Final Provisions of both Ordinances. Both prescribe that "Any discrepancies with the provisions of Chapter Three ('Equipment of detention facilities for detainees'), with the exception of minimum sanitation standards, are to be rectified not later than 1 January 2009. The exception has been made because in practical terms the assurance of sanitation standards requires funding that is to be provided in the next annual budget of the relevant Ministries.

102. MOI actively strives for improving police interaction with the Roma community. In 2007, an Action Plan was approved for implementing the Strategic Guidelines for Development of the Integrated Model, "The Police Close to Society", for 2007–2010. It contains concrete measures for police work in areas and regions with a compact Roma population.

103. Under Article 127 (2) of the Constitution, the Prosecution Service (along with its other functions) supervises the legality of the implementation of penal and other coercive measures. This includes the commencement of enforcement of sentences, control of such enforcement, supervision of compliance with the law in detention facilities where pre-trial custody is enforced, as well as the enforcement of the sentences of imprisonment and life imprisonment. Periodic reports are drawn up and published regarding the performance of

the Supreme Cassation Prosecutor's Office. In fulfilment of instructions issued by SCPO, prosecutors pay monthly visits to the country's prisons and detention facilities. In the event that violations are established, the management of the respective facility is given binding instructions to rectify these, unless they constitute a criminal offence. It is also an established practice for the relevant district prosecutor's office to send a report about any incident in prison facilities, and specifically about instances of use of force and auxiliary devices against inmates.

104. Another form of counteracting violations of the rights of privacy and personal liberty of citizens are the efforts of the Prosecution Service to prevent any unwarranted detention of prison inmates past the date of expiry of their prison sentence. In general, the main reason for such unwarranted detention of inmates who have served out their full prison term is the non-application or erroneous application by the court of the requirements for cumulative enforcement of prison terms for multiple criminal offences perpetrated by the convicted person. The number of cases of unwarranted detention by year, reported by the Prosecution Service, is as follows: for 2004, 68 instances; for 2005, 90 instances; for 2006, 107 instances; for 2007, 97 instances. In terms of the duration of such unwarranted past-term detention, the distribution of cases is as follows: up to 10 days, 23 persons; 10 to 30 days, 16 persons; 30 days to 3 months, 22 persons, and over 3 months, 36 persons. For each individual case of unwarranted detention past the final date of the prison term, SCPO continues to demand from the relevant district prosecutor's office a check and a written report regarding the reasons for the violation and the measures instituted in respect of the case, including for prevention of such cases recurring in the future.

105. The Prosecution Service responds in due course by alerting the court and filing motions for initiation of procedures in accordance with CPC for determining a general penalty, as well as for deducting the duration of the pre-trial custody, in cases where the court has omitted to do so.

106. In keeping with its obligations to supervise the enforcement of coercive measures, the Prosecution Service also performs periodic inspections in psychiatric institutions in Bulgaria, checking the lawfulness of the institutionalization of persons subjected to compulsory medical treatment there and the treatment they receive from the staff. In the course of 2007, the prosecutors' offices in Bulgaria initiated a total of 4,259 case files with regard to the enforcement of such coercive measures. Of these, 2,888 case files are under Article 155 of the Health Care Act (HCA); 398 under Article 88 of the Penal Code and 973, at the initiative of another institution. As a result of their work on these case files, the prosecuting attorneys have prepared and filed a total of 2,419 motions for imposition of coercive measures, of which 1,375 under Article 155 of the HCA, and 149 under Article 88 of the Penal Code. Of the motions filed, the court has granted 1,524, or 63%, and has rejected 245, or 10%. The main reason for the rejection of motions for imposition of coercive measures is the fact that the mental condition of the person in question had improved and compulsory treatment was no longer necessary.

107. Extradition procedures are another area where the Prosecution Service supervises the legality of existing practices. The report on law enforcement and the work of the Prosecution Service and the investigating authorities for 2007 shows that during that period, a total of five (5) persons were extradited from the Republic of Bulgaria to non-EU countries. At the same time, upon the request of Bulgaria, three (3) persons were extradited from the Republic of Turkey. The number of persons extradited from Bulgaria to EU member states was 93, and from EU countries to Bulgaria, 34. A total of 103 extradition procedures were initiated. Ten extradition requests filed by EU countries were turned down on grounds other than those provided by the Convention.

108. During the period under review, a number of administrative measures were effected, in fulfilment of obligations arising from the Convention, by the Ministry of Justice in

relation to legal assistance on criminal, civil and administrative lawsuits at all tiers of the judicial system. Measures have also been instituted with respect to the enforcement of the penalties of imprisonment, life imprisonment and life imprisonment without the possibility of parole, as well as for improving conditions in remand facilities.

109. Under the Legal Counsel Act (2006), legal counsel is provided by attorneys and funded by the State, the aim being to guarantee equal access to justice for all natural persons by means of ensuring and providing effective legal counsel. In compliance with that Act, a specialized and independent government agency was established under the name National Legal Counsel Bureau, subordinated to the Minister of Justice, the aim of which is to organize the provision of legal counsel jointly with the bar associations. The range of services provided by legal counsel includes consultations, preparation of documents pertinent to filing a lawsuit, as well as procedural representation, including in cases of detention under Article 63 (1) of the MOI Act.

110. Legal counsel is provided by the State to several categories of clients: socially vulnerable persons, persons institutionalized in specialized social welfare institutions, as well as foster families, relatives and loved ones with whom a child has been placed under the Child Protection Act. The system of state-provided legal counsel also covers cases where legal defence or representation is mandated by law. The system also covers cases where the suspect, accused, alleged perpetrator or the defendant in a criminal trial or party to a lawsuit does not have the means to pay attorney's fees, but is willing to use one and the interests of jurisprudence require so.

111. The Act provides guarantees for access to the system of state-provided legal counsel and creates the institution of duty attorneys necessary for that purpose. In a separate chapter, it regulates the creation of a National Register of Legal Counsels, and the attorney's fees for such counsel, which is determined by an ordinance of the Council of Ministers. Finally, in the last chapter, the Act regulates the peculiarities of the provision of legal remedy in international disputes.

112. In recent years, the number of inmates in prisons and prison hostels has remained steady, with a minimal decline in 2007; currently, the total prison population stands at 10,271. With respect to accused persons and defendants held in custody in prison facilities, there is a tendency of decline in their overall numbers. Over the years their number changed as follows: in early 2004, 1,861; in early 2005, 1,988; in 2006, 2,015; in 2007, 1,378; dropping to 942 towards the present moment.

113. Overcrowding remains a problem in the main prison buildings. It is alleviated by transferring convicts held in closed-type prison facilities, both first-time and repeat offenders, subject to meeting certain requirements as provided by law, to prison hostels of a transitional type. In the course of 2007, a total of 2,446 inmates have been proposed for such transfer to a court of law; the proposal was granted in respect of 2,142, and rejected for the remaining 304.

114. In the course of 2007, a total of 9,216 individuals were placed in prisons and prison hostels, while 10,010 were discharged from those institutions, including 4,804 convicts released on account of having completed their prison terms; 1,208 on other grounds; 44 died; 56 were extradited; 10 were pardoned for the remainder of their terms; and 75 were granted a partial pardon.

115. By 31 December 2007, 739 inmates had been granted a suspension of the enforcement of their sentence further to Article 447 of the CPC.

116. There has been a slight increase in the number of inmates serving life sentences or life imprisonment without parole. While at the end of 2005, there were 118, in 2006, their number rose to 127, and in 2007, to 144.

117. At present, there are 44 remand facilities in the territory of the Republic of Bulgaria. In recent years (2004–2008) the government has undertaken steps to improve the living conditions and physical environment in those facilities. Minor repairs and facelifts are done on an annual basis. At present there are only two subterranean remand facilities, in Gabrovo and Shumen; at Shumen, one floor is below, and one is above ground. The Ministry of Justice has undertaken concrete steps to improve conditions in those facilities, while planning to build two all-new remand facilities in these two cities. Meanwhile, new remand facilities were opened in Razgrad (2003), Targovishte (2004), and Elhovo (2005). Further remand facilities are to be set up in the cities of Plovdiv and Burgas and the town of Petrich. In the former two cities, premises have already been made available on the grounds of the respective prisons.

118. Regarding the numbers of detainees placed for periods of time in remand, in 2007 their total number was 23,896 persons – 3,768 less persons compared with the preceding year 2006. During the same period in 2007, the number of aliens held in remand facilities totalled 373. It should be emphasized that each individual held in a remand facility fully and effectively enjoys the right to exercise in the open.

119. The Ministry of Health Care has instituted administrative measures and adopted the internal regulations for their implementation for the purpose of improving conditions and meeting the requirements of the Convention. Improving mental health through the introduction of modern principles of prevention and treatment of mental disorders is among the key priorities in the programme of governance of the Ministry of Health Care. By its policy in this particular sphere of health care, Bulgaria fully conforms to EU criteria for mental health. The principles of mental health are also reflected in Bulgaria's national Mental Health Policy, which the Ministry of Health Care implements through concrete measures and actions for improvement of the system of health care.

120. As early as May 1998, the Ministry of Health Care adopted a Concept Paper for the Development of Psychiatric Care in the Republic of Bulgaria, based upon the principles of guaranteeing the human rights of the mentally ill. The reform of Bulgarian psychiatric care continued in the following years, on the basis of the National Programme for Mental Health of the Citizens of the Republic of Bulgaria 2001-2005, adopted by the Council of Ministers. Concurrently with that, a National Action Plan for Mental Health in the Republic of Bulgaria 2004–2012 is in force and being implemented.

121. In implementing Bulgaria's Mental Health Policy, the rights of the individual are guaranteed not only by the relevant provisions of the legislation, but also through the rules and procedures enforced in compliance therewith. Radically new approaches are taken on board in the national programmes, based on respect for the human rights of the mentally ill, including the phasing out of institutional care, where the patient is placed in isolation, and replacing it by a set of services provided at their place of residence, in order for patients to remain a part of the community to which they belong while in good health (the so-called community mental care).

122. Since 2004, the Ministry of Health Care has allocated additional funds for capital expenditure aimed at improving conditions in the state psychiatric hospitals at Radnevo, Tserova Kuria, Karvuna, Karlukovo. The former hospital at Paralenitsa has been relocated to a renovated building in the centre of the city of Pazardzhik, offering excellent conditions for treatment. Since 2007, psychiatric wards have been in operation at the general hospitals in Vratsa and Kazanlak, and a psychiatric section in the general hospital in Omurtag.

123. Some medical facilities are implementing domestic or international projects aimed at improving living conditions on the premises or de-institutionalization. The university-based general hospitals in Sofia and Varna are implementing projects for two children's psychiatric clinics. The psychiatric hospital in the town of Sevlievo is implementing a

project to renovate and reformulate its operation as a medical institution. The hospitals at Radnevo, Tserova Koria, Lovech, Tsarev Brod, and the district hospitals in Russe and Dobrich had bid for, and been awarded, day/information centre/protected home projects. A project for de-institutionalization through the provision of services to high-risk groups within the community is in the process of being implemented, the aim of which is for community psychiatric care to supersede hospital-based psychiatric care.

124. The Ministry of Labour and Social Policy (MLSP) also has a role to play in fulfilling the obligations arising from the Convention. In view of the fact that social services in the Republic of Bulgaria are decentralized, the mayor of the municipality and the director of the relevant specialized institution jointly develop and apply a procedure for protection against violence or abuse. Such procedure prescribes the channel for filing and registering complaints, the terms and procedure for resolving problems as they arise, as well as the notification of the competent authorities. All those actions are coordinated with the Social Support Directorate, the specialized child protection body within the relevant municipality.

125. In fulfilment of the provision of Article 21 (1) subparagraph 3 of the CPA, the Social Support Directorates perform inspections in response to complaints and reports alleging violations of children's rights, and issue binding instructions in remedy thereof.

126. Following receipt of such complaints or reports, the Child Protection Department performs an inquiry and assessment of veracity by gathering relevant information from the child concerned, the family, school, the child's personal physician and any sources familiar with the child's status. If the child is found to be at risk, the Child Protection Department opens a case file and, following a thorough assessment of the case, prepares an action plan setting clear long- and short-term goals, the tools for attaining them and the protective measures to be applied in respect of the child concerned.

127. A priority objective for the staff of the Child Protection Department is to institute measures for protecting children in a family environment, and only after these have been exhausted, or proven futile, can steps be undertaken to remove the child from the family. Placement of a child in a specialized institution is a measure of last resort, undertaken where all other options for the child to be raised by relatives or loved ones have been exhausted, and no suitable foster family is available, except in cases where such institutionalization is urgently needed because of a proven risk to the life or health of the child.

128. The Social Support Directorate, acting through its Child Protection Department, performs checks on reports alleging violence or violation of the rights of children placed in specialized institutions. One of its main functions is active involvement, through the support and cooperation of the competent authorities, in eliminating the causes for instances of violence or aggression towards children placed in such institutions.

129. When a report is received alleging violence towards a child, an officer of the Child Protection Department performs, without delay, an inquiry into the veracity of the allegation, while at the same time providing urgent psychological and social assistance, and if necessary, depending on the nature of the case, notifies the competent authorities of the MOI or the Prosecution Service.

130. There is a steady trend towards a decrease in the total number of children placed in health and social care institutions (in accordance with the Child Protection Act and the relevant secondary legislation). The 32 institutions existing today accommodate 1,125 children, and have 2,900 staff caring for them, including 160 medical doctors, 174 pedagogues and child psychologists, and over 1,300 medical specialists: nurses, rehabilitators, dietary and laboratory technicians, in addition to the almost 1,430 educators

and paramedics. The budget allocation for those institutions amounted to 24.3 million leva in 2008.

131. In the period between February and May 2007, the Ombudsman of the Republic of Bulgaria, further to a Memorandum of Cooperation with the Minister of Justice, instructed his administration to perform inspections in the prisons of Sofia and Stara Zagora, the correctional institution for girls and the women's prison at Sliven, following up on allegations of degrading, cruel or inhuman treatment of inmates by the staff or by fellow inmates. The inspectors also checked protection measures, physical conditions and medical care provided in those institutions.

132. The findings of those inspections have been summed up in a thorough and detailed report published on the website of the Office of the Ombudsman, which, in addition to stating the omissions and weaknesses observed, contains a list of 12 conclusions and a list of 10 recommendations. The latter are generally addressed to the Ministry of Justice, and prescribe, *inter alia*, a review of the adequacy of some provisions of the Enforcement of Penalties Act and the Rules and Regulations on the Implementation of EPA (item 6 of the Recommendations).

133. More specifically, the Ombudsman of the Republic of Bulgaria recommends the following: lifting of the restrictions on the range of persons with whom telephone conversations are allowed (Article 37a of RRIEPA); appointment of the prison warden as custodian of the inmates, authorized to give informed consent regarding the performance of medical treatment on them; decentralization of prison hostels; setting up prison institutions for drug addicts; and including the Ombudsman as one of the institutions to which, pursuant to EPA Article 32 (2), inmates are allowed to send letters in sealed envelopes.

134. LAR (Law on Asylum and Refugees) regulates in a thorough and detailed manner the right of aliens seeking or granted protection to be issued an identity document for the territory of the Republic of Bulgaria. In order for such document, which is issued by the State Agency for Refugees (SAR), to be clearly distinguishable from identity papers issued under the Bulgarian Identity Documents Act, it is designated as a 'registration card'.

135. The directors of the relevant SAR bureaus are authorized to make decisions regarding the accommodation of aliens, since Directive 2003/9/EC requires that aliens be accommodated at the discretion of the relevant administrative authority on a case-by-case basis, and administrative decisions are subject to judicial supervision.

136. In cases where there are doubts that the alien applying for status is of diminished capacity, the law provides for the appointment of experts to perform an evaluation of the applicant.

137. With respect to the steps undertaken to train public servants to apply the provisions of the law for prevention of torture and other forms of cruel, inhuman or degrading treatment or punishment (Article 10 of the Convention), it should be emphasized that the line ministries and other government institutions responsible for the prevention of torture undertake various measures for the proper training of their staff, who are appointed by competitive procedure in the first place. Modern and innovative forms of training are used concurrently with time-proven ones, ranging from induction and periodic training courses and seminars of varying scope and duration within the respective agency or another institution in Bulgaria, to short- or longer-term training courses overseas or participation in international projects or programmes.

138. One of the main goals of MOI is to undertake diverse and multi-faceted measures to train the staff in tolerance and respect for the rights and interests of the public, including persons belonging to ethnic minorities.

139. The norms of international law related to the protection of human rights are internalized in accordance with the defined standards of the Standardized State Requirements for the Civil Service, adopted by the Council of Ministers of the Republic of Bulgaria. Such training is delivered by highly qualified specialized trainers with research degrees and titles. The training curricula, depending on the category of trainees and the duration of the training courses, include matters of international law and human rights.

140. The norms of international legal instruments in the area of human rights are also taught in on-the-job training courses. A useful aid in this respect is the International Human Rights Standards for Law Enforcement Bodies, a pocket handbook for police officers, issued by the United Nations Centre for Human Rights.

141. A special staff training programme in human rights compliance is being implemented with the support of Bulgarian and foreign government institutions and non-governmental organizations, which also provide the relevant lecturers. A long-term programme for cooperation in this area is being implemented with the participation of lecturers from EU nations.

142. In compliance with the general provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ministry of Interior also uses in its specialized training centres curricula featuring international legal instruments on human rights. Theoretical and practical issues of international human rights protection are addressed in specially organized training courses delivered at the Academy of the Ministry of Interior. A consistent and purposeful policy is pursued specifically for dealing with the issues of the Roma community by promoting mutual knowledge and closeness of the diverse ethnic and cultural communities in the Republic of Bulgaria. To that end, training courses are organized for police officers of Roma origin as well as for officers operating in a multicultural environment. A textbook has been issued and training is being delivered in the Roma tongue. A temporary ethnographic exhibition has been set up on "Integration of the Roma in Bulgaria".

143. Training programmes for police investigators comprise compulsory subjects dealing with the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms and other international legal instruments in the area of human rights. Tests cover not just specialized subjects related to statutory investigative procedures but also issues arising from international instruments for the protection of human rights.

144. In accordance with the Action Plan for the Roma Inclusion Initiative 2005–2015, training courses are organized on an annual basis on the subject of "Police Work with Ethnic Minorities", aimed at improving the qualifications of police officers for effective work in a multi-ethnic environment, in compliance with human rights standards.

145. Since November 2006, a project called STEPSS (Strategies for Effective Policing: Stop and Search) is being implemented with the aim of improving police work with minority groups (mostly in stopping, identity checks and searches), as well as control and accountability for such work. The project is implemented in partnership with Hungary and Spain, under British guidance.

146. Neither the Prosecution nor the Investigation Service has delivered specialized training programmes for their staff in the provisions of the Convention. Prosecutors and investigators are professionals with law degrees who have all taken a course on the Convention as part of international criminal law at law school. Later, in their professional practice, they apply those norms, as necessary, which, together with all other relevant norms of legal protection, are a prerequisite for their successful professional functioning. Therefore, no additional special training in prevention of torture is provided for them. At the same time, in all briefings and instructions, staff are urged to comply with international rules of human rights protection, including not to commit acts of torture, or allow such acts

to be committed. That such acts are alien to both the Prosecution and the Investigation Service is also evidenced by the official reports of these services. According to those reports, during the period under review, there have been no complaints on the part of detainees alleging beatings or any other acts of physical or mental torture committed by investigators or prosecutors.

147. Prison staff are also trained systematically in the spirit of the provisions of the Convention.

148. In compliance with the provisions of Article 63 of the European Prison Rules, all newly appointed staff should undergo induction courses in prison service. The curriculum includes subjects such as international standards of treatment of inmates, international standards of medical service in penitentiary institutions, social work as a guarantee for the protection of human rights of detainees, among others.

149. For the purpose of prevention of illegal violence on the part of prison staff against inmates, prior to coming on duty, prison security guards undergo a daily briefing for strict compliance with the rights of inmates, the manner and procedure of using physical force, auxiliary devices and weapons. Such measures are included in the annual plan for training in each penitentiary facility.

150. At the same time, direct methodological guidance and oversight is carried out regarding the enforcement of the penalty of imprisonment. Specialized training sessions are conducted with prison staff concerning the basic standards of international instruments for the protection of human rights in penitentiary institutions and for a lawful and humane treatment of inmates. Psychologists and social workers take part in such briefings of prison security guards.

151. Volunteer committees of inmates seek active involvement in efforts to resolve social problems and other issues related to improvement in living conditions in penitentiary institutions.

152. Each individual case of use of physical force and auxiliary devices is examined in detail, whereby relevant conclusions are drawn and measures undertaken not to allow recurrences of such acts in the future.

153. In accordance with the psychiatric reform programme, the curriculum for majoring and postgraduate students of psychiatry has been modified accordingly.

154. To guarantee humane treatment of patients by staff in psychiatric institutions, specialized training courses are delivered at the Forensic Psychiatry Clinic of the Sofia Medical University on Conflict between coercion and care for mental patients and Crisis interventions on specific clients.

155. With a view to attaining the goals of the Convention, the National Centre for Public Health under the Ministry of Health Care has translated into Bulgarian and published two brochures entitled *Guiding Principles of Ensuring the Rights of Persons with Mental Disorders and Legislation for Mental Health Care: Ten Basic Principles*. The book *Ethical Issues in Mental Health Care* was also published under a research and training programme adopted by the said Centre in conjunction with the Bulgarian Psychiatric Association and the Association of Psychiatric Nurses.

156. Periodic training courses and seminars aimed at raising the qualifications of staff members, including on matters of prevention of acts of torture, are also delivered by the management of the State Agency for Refugees. Such events are organized in part with the support of specialized institutions and organizations concerned. Thus, for instance, in October 2007, SAR and the Office of the United Nations High Commissioner for Refugees, in partnership with NGOs, held a workshop on Standard Operational Procedures for

Aversion and Counteraction of Sexual and Gender-related Violence in the Republic of Bulgaria.

IV. Complaints, queries, indictments, legal proceedings, verdicts, reparation and compensation regarding acts of torture and other cruel, inhuman or degrading treatment or punishment (Article 13 of the Convention)

157. In all ministries and other institutions concerned by the provisions of Article 13 of the Convention, there are internal control bodies in place whose functions include receipt of, and follow-up on, complaints, queries, and so on.

158. In particular, within the Ministry of Interior there is a specialized unit and a streamlined and effective system for receipt of and subsequent follow-up on complaints, proposals, reports and requests by members of the public. Relevant checks have been performed in respect of each and every complaint, and in cases where unlawful acts or conduct on the part of MIO officers have been established, the case files have been referred to the relevant prosecutor's office. By virtue of the newly established Internal Security Directorate, MIO has not only tightened control of the performance of police officers, but is seeking to detect and uncover wrongdoing in the course of their duties of service, including corruption and acts of torture.

159. There is an Inspectorate Department under the Supreme Cassation Prosecutor's Office, and similar control bodies (inspectorates) also operate with appellate prosecutors' offices around the country. These perform inspections in relation to incoming violation reports or established omissions or irregularities. The results of monitoring, as well as of disciplinary inspections of the performance of duties of service, are summarized and analyzed, and the relevant proposals are submitted to the Prosecutor General for adoption of disciplinary and other punitive measures. In 2007, criminal offences were found to have been committed by 25 magistrates. A total of six (6) proposals have been submitted by heads of administration of prosecutor's offices for the imposition of the heaviest disciplinary punishment, namely, dismissal from office. Disciplinary sanctions have been imposed on 22 prosecutors and three (3) military investigators. The sanction of disciplinary dismissal from office has been imposed on two (2) prosecutors and two (2) military investigators, but in all of those cases the sanction was determined for offences and wrongdoings other than torture.

160. During the period 2001–2008, a total of 396 complaints were filed against officers of the system of penitentiary facilities for beatings or other instances of unlawful violence or inhuman treatment of inmates. Of these, 20 have been substantiated and administrative or disciplinary penalties have been imposed on the guilty members of the prison staff.

161. Pre-trial proceedings have been initiated in three instances of wrongdoing, two of which have since been dropped, and the third has ended in dismissal of criminal charges against the accused party and the imposition of a fine as an administrative sanction.

162. To date, there are 26 instances of ongoing criminal proceedings for poor living conditions in penitentiary facilities. In 10 of these, writs of execution have been issued.

163. The Republic of Bulgaria has been found in violation of the European Convention on Human Rights by the European Court of Human Rights in Strasbourg on several counts with regard to violations of prison regulations, mostly non-compliance of the physical conditions of its penitentiary facilities with European standards. In fulfilment of the Court's decisions, measures have been undertaken for general improvement of conditions in prison facilities. At the same time, it should be noted that the deficiencies and irregularities

established reflect the situation at the time of the alleged violation, and not the current situation at those facilities.

V. Actions undertaken with regard to the subjects of concern and recommendations of the Committee with regard to the third periodic report of the Republic of Bulgaria

164. While noting the accomplishments in fulfilment of the obligations of Bulgaria arising from the Convention against Torture, the Committee, in its Conclusions and recommendations, expressed concern about certain issues (paragraph 5) and formulated recommendations (paragraph 6). During the period under review, some of those issues were resolved, while others are the subject of consistent legislative or administrative improvements aimed at resolving them.

A. Resolved issues

Paragraph 5 (b)

165. Paragraph 5 (b) deals with allegations of mistreatment of persons in remand, notably during interrogations by the police, which could constitute torture and which affect, in a disproportionate number of cases, members of the Roma population.

166. The Government has adopted a special programme for social integration of the Roma population. In this context, efforts continue to encourage the police force to hire persons of Roma origin, in line with the relevant recommendation of the Committee.

167. With a view to guaranteeing the prevention of acts of torture against detainees, including members of the Roma community, two new and quite detailed guidelines have been adopted (both referred to earlier in this report): I-3, dated 13 September 2006, and I3-2451, dated 29 December 2006, regarding the procedure to be followed by officers of the military and the regular police force in detaining persons at the relevant detention facilities, the equipment of such facilities and the rules of conduct inside them. Attached to these are 10 blank declaration forms, to be completed in duplicate and signed by the arresting officer and the detainee, one copy being enclosed with the arrest warrant and the other being handed to the detainee. These declarations refer to the detainee's stated request or refusal of legal counsel, either as a free choice or under the Legal Counsel Act; existence of health problems; stated request or refusal of a medical examination by a physician; request for notification of another party of the arrest; the right to visitors or receipt of parcels and food; request for notification of the relevant consular authorities, if the person is an alien; request for provision of a translator or interpreter, and so on. Issues such as submission of such declarations by illiterate persons, or refusal to submit a declaration, are also dealt with accordingly. The Guidelines also provide for a log of detainees, containing their detailed personal data; a receipt in respect of personal effects and cash of the detained person; a medical examinations log; a log for registering instances where the detained person is led out of the detention facility; a log of cash amounts confiscated and spent by/on behalf of detained persons; a log of visits and/or parcels and food received by the detained persons.

168. As mentioned previously, Article 9 and Article 10 of the Ordinances explicitly state that no actions by the competent authorities should include the commission, provocation or toleration of any act of torture, inhuman or degrading treatment or punishment, or acts of discrimination against detained persons. An officer who has witnessed unlawful use of physical force or the commission, provocation or toleration of any act of torture against detained persons, is mandated to intervene in order to prevent or stop such an act from

being committed, and must notify his/her superior officer immediately thereafter of such action.

Paragraph 6 (c)

169. In relation to paragraph 6 (c), the issue of undertaking measures for instituting an effective, reliable and independent system of complaints and remedies and the timely and impartial investigation of all alleged instances of mistreatment or torture, and the punishment of persons with proven guilt thereof, should be considered to have been largely resolved.

170. No centralized system for investigation of complaints has been set up because each Ministries and government agency (MOI, Ministry of Justice, Ministry of Health Care, Ministry of Education and Science, Ministry of Labour and Social Policy, SAR and the State Agency for Child Protection) has its own complaints follow-up system, including for investigation of alleged acts of torture by officers of these institutions.

171. Timely whistle-blowing and notification of the institutions of alleged or suspected torture by officers of these institutions is the right and prerogative not just of the aggrieved party but also of the media and non-governmental organizations. This provides additional guarantees for prevention and counteraction of torture.

Paragraph 5 (d)

172. With regard to the supposed absence of due and timely access on the part of persons in remand to legal counsel and medical help and to contact members of their family or loved ones, and with regard to allegations that access to free medical help is quite limited and ineffective, as well as to alleged discrepancies in the way the results of medical exams are presented to detainees, preventing them from filing complaints and seeking compensation, together with the recommendation for seeking legal and practical guarantees in this respect, it should be noted that these practices belong to the past. With the support of national and international entities, including the Committee against Torture, these issues have been eliminated. Today, the Legal Counsel Act, the State and Municipal Liabilities for Damages Act, the Support and Financial Compensation of Crime Victims Act and Guideline No I3-2451 are in force, addressing in full all problems that existed in the past.

Paragraph 5 (f)

173. The observation that legislative and other measures to assure full compliance with the provisions of Article 3 of the Convention are still insufficiently effective, as well as the assertion that the expulsion of aliens, notably by order of the National Security Service, for reasons of national security, is not subject to judicial control, are no longer relevant. The recommendation for the State to provide assurances that no one will be expelled, returned or extradited to a country where there are sufficient reasons to assume that he or she will be threatened with, or subjected to torture, and that, in compliance with Article 2, section 2 of the Convention, there will be no referral to exceptional circumstances in justification of the commission of the above acts, has been implemented in practice.

174. The Republic of Bulgaria has adopted and applies new legislation with respect to the expulsion of aliens. The relevant provisions are contained in the new Criminal Procedure Code, the MOI Act, the Law on Asylum and Refugees, the Aliens in the Republic of Bulgaria Act, the Bulgarian Identity Documents Act, among others. With the entry into force of the new State Agency for National Security Act, the National Security Service has been abolished. During the first half of 2007, the necessary amendments were made to the Aliens in the Republic of Bulgaria Act to regulate not only the expulsion of an alien in the case where his/her presence in the country constitutes a serious threat to national security

and public order (Article 42), but also where his/her expulsion is mandated by a decision of the competent authorities of another EU member state (Article 42(a)–(g)). More importantly, under the new Administrative Procedure Code (in force since 12 July 2006), a possibility is already provided for any and all administrative decisions to be challenged in court, including those regarding the expulsion of an alien.

175. The applicable Bulgarian legislation provides explicit guarantees by imposing a ban on the extradition of a person to another country where there are sufficient grounds to believe that said person will be subjected to torture. Under Article 7 of the Extradition Act, "Grounds for Denying Extradition," and in compliance with the European Arrest Warrant (effective 4 July 2005), there are eight (8) separate reasons to deny extradition, including The provisions of paragraph 5, which states that 'if said person is to be subjected in the applicant country to violence, torture or to cruel, inhuman or degrading punishment, or if his/her rights in a criminal procedure or the Enforcement of his/her penalty are not guaranteed, in accordance with the requirements of international law.'

Paragraph 5 (g)

176. The required legislative changes have been introduced with respect to the provision of compensation or rehabilitation to victims of torture or their heirs, in accordance with Article 14 of the Convention and the recommendation to guarantee to all persons who are victims of violations of their rights, both by law and in practice, to means of effective redress, including the effective right to fair and adequate compensation.

177. The applicable Bulgarian legislation explicitly guarantees a genuine right to redress, including financial compensation, to persons whose rights have been violated in accordance with the Convention. Article 2 of the State and Municipal Liabilities for Damages Act imposes liability on the law enforcement authorities for harmful actions. The State is to be held liable for damages caused to members of the public by the police and judicial investigation, the prosecution service, courts and special jurisdictions as a result of the following unlawful actions:

(a) Placement in custody, where it has been subsequently rescinded for lack of legal grounds;

(b) Charging a person with commission of a criminal offence, in cases where such person has subsequently been acquitted, or criminal proceedings in respect of said person have been dropped because the accused person was found not to be the perpetrator of the offence or the offence did not constitute a crime, or because criminal proceedings were initiated after the offence had been extinguished by a statute of limitations or amnestied;

(c) Sentencing to a penalty under the Penal Code or imposition of an administrative penalty, in cases where the sentenced person has been acquitted or said administrative penalty has been annulled;

(d) Imposition by a court of law of forced medical treatment or other medical procedures, where these have been subsequently rescinded for lack of valid reason for imposing them;

(e) Imposition by a court of law of an administrative measure, where such decision has been subsequently rescinded as unlawful;

(f) Enforcement of a penalty beyond the court-determined term or severity.

178. The new amendments prepared for said Act are designed to broaden further the scope of such liability.

179. Under Article 4 of the said Act, the State owes compensation for any pecuniary and moral damages caused in direct and immediate consequence of the harmful action, regardless of whether they were caused through the fault of the official involved. In order to completely guarantee the rights of the aggrieved parties, in cases where pre-trial proceedings instituted in respect of a detainee were dropped or said detainee was acquitted, the authority which dropped proceedings or the court which acquitted the accused person is under obligation to publicize that fact through the media if the aggrieved party or his/her heirs would so desire. Such an announcement is obligatory in cases where the media have already publicized the case (Article 11).

180. In addition to the above-cited remedy provided for under said Act, an aggrieved party who is victim to a criminal offence (e.g. under Article 287 viz. torture as per Article 1 of the Convention) may file a civil suit seeking compensation within the framework of criminal proceedings in accordance with the Criminal Procedure Code. Such aggrieved party or his/her heirs who have sustained damages as a result of said criminal offence may file a civil suit seeking compensation for damages and may be constituted as claimants in such civil suit.

181. If as a result of such criminal offense the aggrieved party has sustained grave bodily harm but has failed to file a civil suit either in accordance with the Criminal Procedure Code within the framework of the ongoing criminal proceedings, or separately under the Civil Procedure Code, then the aggrieved party has another option, that of claiming financial compensation under the Assistance and Financial Compensation to Crime Victims Act (in force since 1 January 2007). Under that Act, the aggrieved party or his/her heirs are entitled to file a claim seeking financial compensation, which covers jointly or separately pecuniary damages ensuing directly from the perpetrated criminal offence and amounting to:

- Cost of treatment
- Missed benefits
- Legal and administrative costs
- Missed support
- Funeral costs
- Other pecuniary damages (Article 14)

182. Another option for fair compensation of aggrieved parties is provided through the gradual introduction of new, alternative and faster procedures for speeding up criminal trials, including through mediation. The provision of an entire regime for alternative settlement of disputes has been defined as one of the priorities of the updated strategy for reform of the Bulgarian judicial system. The same goal is included in the National Concept Paper for Reform of the Criminal Justice System. In 2006, the Government adopted a National Strategy for Assistance and Compensation to Crime Victims. Article 13 of the Guiding Principles of said Strategy states that the aggrieved parties are entitled to mediation in relation to the criminal proceedings. Currently, in compliance with Council of Europe recommendations and the Mediation Act adopted in Bulgaria, the National Association of Mediators has come up with proposals and drafts for relevant amendments to the Penal Code and the Criminal Procedure Code, aimed at making mediation an effective institution that would contribute, along with other bodies and procedures, to the swift, fair and adequate compensation of aggrieved parties, including, where possible, victims of torture.

Paragraph 5 (h)

183. Regarding the inadequate physical conditions in remand centres where accused persons can be held for up to two years, some of which are still located below ground, or lack facilities for outdoor exercise, as well as with regard to the recommendation contained in as per paragraph 6 (i) to remedy the identified problems, information has already been provided in the present report. The two below-ground remand facilities at Gabrovo and Shumen are being replaced with all-new buildings, currently under construction. All persons placed in those remand facilities will effectively be entitled to outdoor exercise.

184. Living conditions are improving in accordance with the requirements of minimum sanitation standards. To that end, the relevant ordinances had set a deadline of 1 January 2009. On the other hand, an all-round solution to the problem is proposed in the draft of a new Enforcement of Penalties Bill, including through the construction of new prisons.

185. As for the performance of independent inspections, that issue is thoroughly dealt with in a separate Section VI, "Procedure for access to remand facilities and provision of information about detainees" in the above cited Guidelines of 2006 and 2007 regarding the procedure for detention of persons by the relevant authorities, as well as the requirements to the furnishing and equipment of remand facilities. Article 54 defines the right of access for international and non-governmental organizations for purposes of control of human rights compliance and the internal order and regime in remand facilities.

186. In relation to the above, on 28 February 2007, the European Anti-torture Committee issued the report of its 4th mission to Bulgaria from 10 to 21 September 2006. The mission had observed overcrowding at the remand facility in Plovdiv, as well as staff shortages in some prisons. The Committee experts also made recommendations for improvement of the level of social activities in penitentiary institutions – areas in which the necessary measures have been undertaken and the recommendations have been followed up.

Paragraph 5 (e)

187. In addition to the problems that have been resolved wholly or in part, mention should be made of the issue of poor conditions at institutions for persons with mental disorders and the insufficient steps undertaken in that respect by the authorities for addressing that problem, including through legislation regarding forced institutionalization for purposes of psychiatric evaluation and the absence of procedures of judicial appeal and control.

188. Some legislative, administrative and other measures undertaken so far for prevention of torture in the field of psychiatric evaluation or treatment have already been mentioned this report. As has been pointed out, the entire legislative framework governing this matter has been totally updated, while the previously existing procedure of judicial appeal and oversight has been preserved. Therefore, issues relating to inadequate conditions in mental homes, staff shortage and so on are being addressed, including with foreign assistance.

189. As for institutional control over the placement of children in social welfare homes, the State Agency for Child Protection carries out thorough periodic inspections of compliance with children's rights, and if irregularities are found, undertakes measures for eliminating them. Complete and detailed information regarding monitoring of compliance with children's rights and the standards and quality of services provided to children, together with the measures undertaken in 2005, 2006 and 2007 to improve those, is contained in the relevant reports.

190. In the course of 2007, a total of 26 scheduled inspections were performed at Social Welfare Directorates, local offices of the Child Protection Agency and at medical and social care institutions for children across the country. Another 70 checks have been carried

out in response to irregularities reports, followed by 31 repeat inspections of compliance with the prescribed corrective measures. In 2006, seven (7) institutions were marked for closure, but technologically the process requires a certain period of time.

B. Issues being resolved by legislative or administrative means

191. About the criminalization of the offence of torture, and the possible inclusion in the law of the provisions of MOI Guideline No I-167, regarding the so-called 'special' regime during the first five years of serving a life sentence, or of life imprisonment without the possibility of parole, it was already noted that the legislative process in Bulgaria is directed towards adoption of all-new laws and pieces of secondary legislation and of administrative, organizational and other measures in accordance with the provisions of the Convention and the recommendations of the Committee.

192. In relation to the introduction into the Penal Code of provisions regarding the crime of torture, the Bulgarian doctrine of criminal jurisprudence and the prevailing opinion among parliamentarians was that regardless of the fact that no specific definition of torture is explicitly incorporated into the Penal Code of the Republic of Bulgaria, offences covered by Article 1 of the Convention are provided for in the Penal Code, including Article 287 on bodily harm, as well as the broader content of Article 143 on coercion. In addition, the General Provisions of the Penal Code contain terms such as complicity, cumulative offence, attempted criminal wrongdoing or conspiracy to commit a crime, which all have their practical relevance to the texts of the Special Provisions. In such a scenario, the literal borrowing of language from international instruments, including Article 1 of the Convention Against Torture, would cause overlapping of existing acts of wrongdoing and definitions of various criminal offences under the Bulgarian Penal Code, which would cause significant difficulties in its implementation.

193. However, the prevailing opinion has gradually changed and a bill may be introduced seeking to incorporate a comprehensive text in the Penal Code, in accordance with Article 1 of the Convention.

194. Regarding instances of unduly severe treatment of persons serving a sentence of life imprisonment or life imprisonment without parole, and the recommendation to have their regimes reconsidered, such provisions are included in the current Enforcement of Penalties Act (Articles 127 (a) to (e)). However, as was reported in some detail hereinabove, there is a working group under the Council of Ministers that is working on a draft for a new Enforcement of Penalties Bill. In this context, the Committee's comments regarding a more benign treatment of persons serving a life sentence have been taken into account.

VI. Conclusion

195. Human rights violations, including acts of torture and other cruel, inhuman or degrading treatment of punishment occur, albeit with a varying frequency and gravity, in every country the world over, regardless of the state of its economy or level of democracy and civil society and no measures undertaken would fully guarantee the complete elimination of any and all instances of torture by individual officers, including as a result of deficiencies in their value system.

196. Therefore the efforts of the Government of the Republic of Bulgaria are focused equally on eliminating the objective conditions permitting the commission of acts of torture. Resolute efforts aimed at the prevention of instances of torture will continue in the future, but its effective elimination will objectively be a process which will take time.

197. In this context, Bulgaria will continue to adopt all necessary legislative, administrative and other measures, including in accordance with the relevant recommendations of the Committee against Torture, in order to ensure the fullest implementation of its obligations arising from the Convention.