



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Bulgaria
from 3 to 5 November 2009

Issues reviewed:

Human rights of minorities and of children in institutions

Executive Summary

Commissioner Thomas Hammarberg and his delegation visited Bulgaria from 3 to 5 November 2009. During his visit, the Commissioner held discussions on human rights issues, focusing on the protection of the human rights of minorities and children. The Commissioner met with a number of authorities, including the Minister of Interior, the Minister for Foreign Affairs and the Minister of Labour and Social Policy. He also held discussions with religious leaders and civil society representatives.

The present report focuses on the following major issues:

1. Overview of minorities in Bulgaria in relation to European and international instruments:

Noting that Bulgaria has ratified the vast majority of the major European and international human rights instruments, the Commissioner encourages the Bulgarian authorities to systematise their implementation and in particular to enhance the protection of minority groups and their members. Furthermore, he recommends ratification of Protocol N° 12 to the European Convention on Human Rights, the European Charter for Regional or Minority Languages and the Additional Protocol to the Convention of Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

2. Protection against discrimination, racism and intolerance towards minorities:

The Commissioner welcomes the anti-discrimination legislation enacted and the respective institutions established. In order to ensure effectiveness and evaluate results in this field, the Commissioner calls upon the authorities to consider the implementation of a comprehensive data-collection system. The successful work of the Commission for Protection against Discrimination should be enhanced by allocating adequate resources. The National Council for Cooperation on Ethnic and Demographic Issues should be structured in such a way as to ensure that all minority groups are represented and that NGOs can participate on the basis of clearly defined criteria. Noting with concern a tendency of Islamophobia, the Commissioner calls on the authorities to establish a system of open, systematic consultations with all minorities in accordance with the Council of Europe standards. With regard to a worrying trend towards racially motivated offences, the Commissioner recommends a legislative amendment that would make racist motivation an aggravated circumstance for all offences. Serious acts of intolerance should be publicly condemned and promptly investigated to ensure that perpetrators are prosecuted. He further recommends an overhaul of domestic law and policy in order to ensure that excessive use of force by police is prevented through clear legal provisions in line with the case law of the European Court of Human Rights. The creation of a framework for impartial investigations into alleged police misconduct is also recommended. In so far as victims of the "Revival Process" have not been recognised or provided with redress, the Commissioner calls on the authorities to provide reparation and find speedily a solution for pending pension claims.

3. Enjoyment by minorities of freedom of religion, association and assembly:

Noting with appreciation that under domestic law religious freedom is recognised as a fundamental right and that all religions are declared free and equal, the Commissioner recommends that the law concerning registration of religious denominations be kept simple in order not to deter associations from registering. Any ambiguity in the current Denominations Act should be erased and local authorities and law enforcement officers should be properly instructed (including on the basis of the case law of the European Court of Human Rights) to avoid unnecessary interference with the right to exercise one's freedom of religion. In this context, the Council for Dialogue Among Religions could serve as a forum to develop concrete proposals. In view of the reported attacks on places of worship, in particular mosques, the Commissioner calls on the authorities to vigorously investigate any attacks on religious sites and to bring to justice identified offenders. Welcoming the settlement of many cases relating to properties which were nationalised under the Communist regime – including those of religious groups – the Commissioner calls upon the authorities to resolve outstanding property claims, including those of the Muslim community, by establishing effective domestic remedies to accommodate such claims and restore well-founded

rights. In this regard, he strongly recommends an enhanced dialogue with the Muslim community to speedily settle property-related questions. Noting that domestic laws on freedom of association should be precise and proportionate, the Commissioner recommends a systematic dialogue for this purpose with all minority groups in Bulgaria, in line with the Council of Europe standards. The Commissioner also recommends an amendment to the Constitution in order to better safeguard minorities' right to freedom of association and assembly and fully align practice with the standards of the European Convention on Human Rights and the case law of the European Court.

4. Enjoyment by minorities of social rights: Noting with appreciation the efforts made in the field of education for integrating children from minorities, the Commissioner encourages the authorities to continue such efforts. He recommends systematic data collection and a systematic evaluation of the respective programmes with a view to better combating segregation and improving job prospects. He commends the numerous measures adopted to improve access of minority groups to the labour market. Noting the limited impact of such measures so far, he recommends their systematic evaluation with a view to increasing their effectiveness in order to increase minority group members' access to the labour market. The Commissioner encourages the authorities to strengthen their efforts to implement their National Health Strategy with a view to improving access to information and health services to members of socio-economically disadvantaged minority groups, particularly Roma, ethnic Turks and Pomaks and to ensure effective co-operation between the different authorities involved. The authorities are called upon to safeguard the constitutional right to social assistance for Bulgarian citizens, including particularly vulnerable groups in light of the relevant decision by the European Committee of Social Rights of February 2009.

5. Issues concerning the human rights of Roma: Despite improvements including implementation of the Decade of Roma Inclusion action plans, Roma in Bulgaria continue to face obstacles in the enjoyment of their human rights. As witnessed by the Commissioner, access to adequate housing remains problematic for Roma who live in sub-standard conditions. The Commissioner urgently calls on the authorities to implement the 2006 decision by the European Committee of Social Rights regarding evictions of Roma as well as to offer adequate housing to Roma families currently living in unsuitable conditions. Concerned about the racially motivated violence against Roma, the Commissioner urges the authorities to conduct effective investigations. The Commissioner recommends that the authorities improve the access of Roma to social rights, including health care and employment, as this minority continues to face particular difficulties in these fields. In this context, education is of paramount importance. The authorities are therefore invited to improve and develop existing measures to tackle the problem of Roma children dropping out of school. The Commissioner noted that Roma children are disproportionately represented among children who are institutionalised (see below).

6. The protection of children's rights: The Commissioner welcomes the authorities' efforts in this field, including children's deinstitutionalisation. However, large, unsuitable institutions continue to accommodate a number of children, especially those with intellectual disabilities, throughout the country. The Commissioner considers that priority should be given to the closure of these structures. He invites the authorities to adopt a comprehensive deinstitutionalisation programme with the support of the local authorities and the participation of civil society and the parents concerned. The Commissioner points out that this process will not meet with success without the provision of alternative care and foster families. Individual plans must also be adopted for each child living in an institution and these must be reviewed on a regular basis. The Commissioner considers that co-ordination between the different authorities concerned at national and local level must be improved and a mechanism to exchange information and good practices be set up. Education of children with disabilities must also be improved. The Commissioner recommends that the authorities fully implement the relevant 2008 decision of the European Committee of Social Rights by making education available and accessible to children with disabilities.

The Bulgarian authorities' comments are appended to the Report.

Introduction

1. The present report follows a visit to Bulgaria by the Council of Europe Commissioner for Human Rights (the Commissioner) from 3 to 5 November 2009 during which the focus was on the rights of minorities and the rights of the child.¹
2. The Commissioner wishes to thank the Bulgarian authorities in Strasbourg and Sofia for the assistance they provided in facilitating the independent and effective performance of his visit.
3. In the course of his visit, the Commissioner held discussions with a number of state authorities, including the Deputy Prime Minister and Minister of Interior, Mr Tsvatan Tsvetanov, the Minister for Foreign Affairs, Dr Rumiana Jeleva, the Minister of Labour and Social Policy, Mr Toyu Mladenov and the Acting Minister of Education, Youth and Science, Mr Sergei Ignatov as well as with members of the Bulgarian Delegation to the Parliamentary Assembly of the Council of Europe. The Commissioner also met with the Ombudsman of the Republic of Bulgaria, the Commission for Protection against Discrimination, the UNICEF representative, religious leaders and a large number of civil society representatives.
4. In the present report, following an overview of minorities in Bulgaria (Section I), the Commissioner focuses on the following major issues: Protection against discrimination, racism and intolerance towards minorities (Section II); Enjoyment by minorities of freedom of religion, association and assembly (Section III); Enjoyment by minorities of social rights (Section IV); Issues concerning the human rights of Roma (Section V) and the protection of children's rights (Section V), followed by the Commissioner's conclusions and recommendations (Section VI).

I. Overview of minorities in Bulgaria in relation to European and international instruments

5. Bulgaria acceded to the Council of Europe and ratified the European Convention on Human Rights in 1992. Bulgaria has ratified and is thus bound by the vast majority of the major European and international human rights instruments. Although Bulgaria is a party to the Framework Convention for the Protection of National Minorities of the Council of Europe (hereinafter "the Framework Convention"), certain other important Council of Europe treaties for the protection of minority rights have been signed, but are not yet ratified, namely Protocol N° 12 to the European Convention on Human Rights and the Additional Protocol to the Convention of Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. To date, Bulgaria has neither signed nor ratified the European Charter for Regional or Minority Languages.
6. Benefitting from the influence of many different cultures over time, Bulgarian society is characterised by ethnic, religious and linguistic diversity. Main languages spoken are Bulgarian and Turkish and the main religions are Eastern Orthodoxy and Islam. According to the 2001 national census, the total population was 7 928 901 of which 6 655 210 (83.6%) were Bulgarians, 746 664 Turks (9.4%), 370 908 Roma (4.6%), 160 000-240 000 Bulgarian-speaking Muslims or Pomaks (2-3%), 15 595 Russians, 10 832 Armenians, 10 566 Vlachs, 5 071 Macedonians, 3 408 Greeks, 2 489 Ukrainians, 1 363 Jews, 1 088 Romanians and 18 792 "others", a category that included Tatars and Gagauz. The census also recorded 62 108 whose ethnicity was not stated and 24 807 as unknown.

¹ During his visit the Commissioner was accompanied by Mr Julien Attuil-Kayser, Adviser.

II. Protection against discrimination, racism and intolerance towards minorities

1. Anti-discrimination legislation and relevant national institutions

7. The Commissioner welcomes the adoption of the Protection against Discrimination Act (PADA) in 2004 and the subsequent establishment of the Commission for Protection against Discrimination (CPD) in 2005. Under the above Act, the Commission, comprising people from different ethnic groups, may receive complaints, issue fines, make recommendations and monitor their implementation as well as recommend legislative amendments. The Commissioner wishes to express his appreciation for the detailed information given by the chairperson of the CPD, Mr Kemal Eyup, during his visit. Observing that civil society considers the implementation of the law a success, the Commissioner finds the work of the CPD encouraging and believes that it has the potential to strengthen the minority rights protection system in the country. He also notes that a body of domestic case law is developing and awareness of the protection afforded by law is rising as a result of information campaigns. Consequently, the number of complaints is also increasing by approximately 30% every year.
8. The Commissioner notes with appreciation that the CPD explicitly gives international law precedence over domestic norms in accordance with the Bulgarian Constitution. The CPD takes a firm stand against employers who fail to protect their employees against discriminatory practices and is developing a strong practice against racist hate speech. The Commissioner commends the CPD for currently conducting a survey into discrimination in the labour market to assess the impact of the financial crisis on vulnerable groups and hopes this will serve as an example to other Council of Europe member states.
9. During his visit, the Commissioner was informed of the government's plans to combat the financial crisis by reducing state expenditure. In this context, the government intends to reduce the size of regulatory bodies, in the case of the CPD from nine to five members. The Commissioner is concerned that such a step could considerably slow down the treatment of cases, making the whole system less efficient. This would be detrimental to the fight against discrimination, particularly in view of the growing caseload. The Commissioner shared his concerns with the respective authorities, clearly indicating that the image and credibility of the CPD should not be undermined as a result of seemingly confusing political signals in the context of current public discussions. This is even more important in a time of economic crisis as the most vulnerable members of the population are generally hit hardest. Given the CPD's valuable work in this domain, the Commissioner considers that the authorities should not only exempt this body from budgetary cuts, but rather ensure that it receives sufficient resources to allow it to continue carrying out its work effectively. He further encourages the authorities to continue their information campaigns on anti-discrimination law and on the work of the CPD.
10. The Commissioner appreciates the work of the National Council for Cooperation on Ethnic and Demographic Issues (NCCEDI), the main national body for consultation on and co-ordination of the policies in Bulgaria regarding persons belonging to ethnic, religious and linguistic minorities. It is presided over by the Deputy Prime Minister, Mr Tsvetan Tsvetanov, with whom the Commissioner met. At the time of the visit, the NCCEDI was composed of representatives of 16 Ministries, 9 State Agencies and 57 NGOs which included, among others, various minority associations, 40 of them working on Roma issues. NGOs have to re-register every year. The minority groups represented in NCCEDI are the Turks, Roma, Armenians, Vlachs, Aromanians, Karakachans, Tatars and Greeks. The NCCEDI meets two to three times a year.
11. During his visit, the Commissioner met with representatives of Bulgarians of Macedonian origin and Bulgarian-speaking Muslims (Pomaks), groups currently not members of the NCCEDI. Keeping in mind that the Framework Convention leaves the definition of the scope of the term "national minority" to the state parties, the Commissioner believes that the position of these communities should be examined by the government in consultation with the representatives of these communities if they seek membership in the NCCEDI. This process would provide the

opportunity for a transparent and constructive dialogue between the government and groups of citizens who consider themselves minority groups.

12. The Commissioner welcomes the NCCEDI as a forum for discussion and advises the authorities to reflect further on the membership and structure of the NCCEDI so that it allows all minorities to be represented and NGOs to be selected on the basis of clearly defined criteria in line with good administrative practice.
13. The Bulgarian government has also adopted a number of national strategies and action plans relating to minorities, among them the Healthcare Strategy for Disadvantaged People from Ethnic Minorities and its Action Plan, the Framework Programme for Equal Integration of Roma in Bulgarian Society and the Action Plan for its Implementation, a Programme against Segregation in Education and the National Programme for Improving the Living Conditions of Roma (2005-2015).
14. While welcoming this framework for minority issues, the Commissioner would like to draw the attention of the Bulgarian authorities to the criticisms he received regarding the ineffective implementation and/or insufficient results stemming from the above initiatives.
15. The Ombudsman of the Republic of Bulgaria, Mr Ginio Ganev, informed the Commissioner that he receives few complaints from citizens regarding discrimination as such citizens usually turn to the CPD. As regards cases brought to his attention, some of them concerning Roma, the Ombudsman has investigated whether there was evidence of maladministration, including discrimination and issued recommendations accordingly.

2. Criminal law

16. Articles 162-165 of the Bulgarian Criminal Code contain provisions prohibiting incitement to racial hatred and discrimination, racially motivated violence, incitement to religious hatred and attacks on religious grounds. The general part of the Criminal Code states that the motives for the commission of the offence will be taken into account by the domestic courts. In its report published in 2009, ECRI recommended that a provision be inserted in the Criminal Code expressly stating that racist motivation for any ordinary offence constitutes an aggravating circumstance. The Bulgarian authorities informed ECRI that they deemed their criminal law sufficient to consider racist motivation as an aggravating circumstance in respect of any offence.
17. The Commissioner believes that racially motivated offences are particularly dangerous for society as they attack the dignity of the individual concerned and corrode social cohesion. Therefore, such offences must be duly investigated and punished in accordance with the law and the Council of Europe standards. Awareness among law enforcement officers, prosecutors and judges is mandatory to ensure that racist motivation is identified when investigating the circumstances of the individual case. The Commissioner believes that the judiciary would be better equipped to combat racism and that it would send a strong signal to society at large if an explicit provision making racist motivation an aggravated circumstance was introduced into the Criminal Code.

3. Law enforcement

18. The Commissioner observes that members of minority groups still seem to be under-represented in the judiciary as well as in the police force. This is particularly the case for members of the Roma community. He notes with concern the persistent allegations of discriminatory treatment in the form of racial profiling as well as ill-treatment of members of the Roma community by individual police officers. The Commissioner believes that trust in unbiased law enforcement at all levels is mandatory for the functioning and cohesiveness of society. He reiterates that ethnic

profiling is a widespread form of discrimination that discourages people from co-operating with the police and is thus particularly counterproductive.²

19. Investigations into cases of alleged, unlawful use of firearms and ill-treatment by law enforcement officers have been reported as ineffective. The Commissioner is aware that the execution of relevant judgments of the European Court of Human Rights is still subject to supervision by the Committee of Ministers.³ It seems that the domestic legal framework for the use of force and firearms does not contain sufficient safeguards to adequately protect life and integrity or to secure effective investigations into any alleged, excessive use of force.
20. Furthermore, it seems that Roma do not always have access to legal counselling upon arrest, sometimes due to lack of knowledge of their rights. Among the Roma community there is the impression that attacks on Roma individuals are not actively investigated and prosecuted.

4. Data collection

21. The Commissioner observes that, apart from the 2001 national census, no data on the size of the different minorities is available. With regard to discrimination and racially motivated offences, the Commissioner is not aware of any data-collection system being in place. He notes that ECRI has repeatedly encouraged and, in its last report, recommended that the Bulgarian authorities consider ways of establishing a coherent, comprehensive, data-collection system in order to monitor the situation of minorities by means of information broken down according to ethnic origin, language, religion and nationality and that the data be collected in different public policy areas ensuring confidentiality, informed consent and voluntary self-identification.⁴
22. The Commissioner believes that the Bulgarian authorities would benefit from a comprehensive data-collection system as this would enable them to evaluate the impact of the numerous programmes in place to improve the living conditions of minorities, particularly Roma. The costs of such a system would be quickly recovered through the efficiency achieved by proper evaluations and programme adjustments. The Commissioner strongly encourages the Bulgarian authorities to assess the implementation of a comprehensive data-collection system as recommended by ECRI, possibly with the help of a pilot project.

5. Growing intolerance and effects on minorities

23. The Commissioner is concerned that in many European countries a number of public figures draw on stereotypes and launch verbal attacks against ethnic and/or religious groups, thus promoting a climate of intolerance towards such groups. Sadly, Bulgaria is no exception. The Commissioner notes with appreciation that in 2008, the Sofia Court took a firm stand and sentenced a Bulgarian nationalist leader for harassment of ethnic Turks.
24. The Commissioner observes that in Bulgaria, as in other Council of Europe member states, certain media employ stereotypes, often at the expense of minorities, not least the Roma. He notes with concern that there seems to exist little activity from the Council for Electronic Media or from the ethic committees existing in press and electronic media to combat even explicit racism.⁵ He is, however, aware of certain activities, such as the report on under-representation of ethnic minorities in broadcasting and a discussion on hate speech in the media, which were organised by the Council for Electronic Media in 2008. The Commissioner was informed that there is a

² See also the Commissioner's Viewpoint "Stop and searches on ethnic or religious grounds are not effective", 20/07/2009.

³ *Tzekov v. Bulgaria*, judgment of 23/02/2006; *Velikova v. Bulgaria*, judgment of 18/05/2000 and other cases concerning lack of effective safeguards against death and ill-treatment and lack of effective investigations.

⁴ ECRI, "Report on Bulgaria", (fourth monitoring cycle), adopted on 20/06/2008, published on 24/02/2009, CRI(2009)2, p. 39.

⁵ See also the examples given in the ENAR, "Racism in Bulgaria", Shadow Report, 2008, p. 20.

short, daily news programme on the Bulgarian National Television (BNT) of about ten minutes in Turkish. He would appreciate more information on the participation of minority groups in broadcasting.

25. The Commissioner is very concerned about reports of verbal and physical attacks on members of the Muslim community as well as on their religious sites, in particular their mosques and he also regrets the failure of the authorities to prosecute the perpetrators of such acts. He noted in particular that in October 2009 a mosque was set on fire in Blagoevgrad, in south-western Bulgaria and another one in Nikopol at the Danube. He was informed that there have been 110 cases of attacks on Muslim houses or places of worship across Bulgaria in the past 20 years; in none of these cases the perpetrators were identified and brought to justice.
26. The Commissioner reiterates that lenience in the face of hostility towards members of minority groups and attacks on their places of worship are not acceptable, particularly when criminal behaviour has been identified. In this context, he recalls the case law of the European Court of Human Rights under which states have a positive obligation to protect faith groups and their members from harassment and physical attack.⁶ He urges the authorities to publicly condemn any acts of intolerance and to investigate them promptly and thoroughly to ensure that the perpetrators are prosecuted and that similar acts are prevented in the future.
27. The Commissioner is concerned that anti-Semitic material is still occasionally being published and statements being made by extreme nationalists as well as places of worship being desecrated. During his visit, the Commissioner was informed of certain anti-Semitic incidents including, anti-Semitic slogans such as "Juden Verboten" (Jews forbidden) painted in January 2009 on the Shoah memorial in Plovdiv. The Commissioner underlines that all these allegations should be fully investigated.
28. During his visit, the Commissioner also met with representatives of the Pomak community, who are Bulgarian-speaking Muslims. This minority is today estimated to be between 160 000 and 240 000 people (about 2-3% of the total population) mainly residing in the area of the Rhodope Mountains.⁷ According to the 2001 national census, 49 764 individuals stipulated that they were Muslim-Bulgarians.⁸ It seems that there are no members of the Pomak community in the Bulgarian National Assembly. However, they participate, to a certain extent, at a local level where some members of this community have been elected mayors in certain towns. At a national conference in October 2008, they declared their wish to be recognised as a separate ethnic group, to have their own television programmes and enhanced presence in the National Assembly.
29. The Commissioner was informed of increasing state pressure on the Pomak community since members of it have been suspected of being involved in religious and ethnic violence and fundamentalist behaviour. A mayor was reportedly arrested in March 2009 because the Koran was read publicly in his village and a school was inspected eighteen times in 2009 by a number of authorities. The Commissioner notes with concern a growing Islamophobia in Council of Europe member states, confusing Muslim beliefs with radical fundamentalist behaviour. The Commissioner reiterates that stereotyping should be avoided in a democratic, open-minded society. Allegations of criminal conduct must be investigated whilst, at the same time, the principle of proportionality should be observed when conducting investigations. State authorities must carefully assess the possible impact of their actions so as not to unduly undermine public trust in their impartiality.

⁶ See, *inter alia* 97 *Members of the Gidani Congregation of Jehovah's Witnesses and 4 others v. Georgia*, judgment of 03/05/2007.

⁷ See www.minorityrights.org on Bulgaria.

⁸ ECRI, *op. cit.*, p. 57.

6. Pending issues relating to the past practice of forced, ethnic assimilation

30. The Commissioner notes with appreciation the progress made on behalf of the members of the Turkish minority community in Bulgaria. However, he observes with concern some outstanding issues that urgently need to be resolved to fully overcome the effects of the forced assimilation process during the communist regime. Bulgarian citizens of Turkish origin were subjected to forced assimilation between 1984 and 1989 (“Revival Process”) during which the use of the Turkish language was forbidden, people were forced to give up their Turkish names and adopt Bulgarian names, and cultural/religious institutions and cemeteries were closed or destroyed. During his visit, civil society representatives informed the Commissioner that they still continue to face problems today with the public administration because of the enforced name changes.
31. Resistance to the forced assimilation process was often dealt with by detention in prisons and concentration camps like the one on the island of Belene. After the 1989 mass protests by ethnic Turks in Bulgaria, approximately 350 000 of them were expelled to Turkey. After the fall of communism around 120 000 of them returned to Bulgaria while the rest remained in Turkey.
32. The Turkish minority which according to the 2001 national census constitutes 9.4% of the total population, today has integrated into a democratic country and enjoys full representation in political life. The Commissioner notes with appreciation the findings of ECRI’s report of 2009 in which it was indicated that several ethnic Turks held high-level government posts as well as the office of mayor, while their widespread participation in the electoral process was also recognised. Nevertheless, the victims of forced assimilation still request a proper investigation into these incidents and reparation, including an official recognition of the suffering inflicted on 517 ex-prisoners who were placed in the Belene island camp.
33. In 1991, the Bulgarian Parliament approved a Rehabilitation Act aiming to compensate the victims of the “Revival Process”. According to the information received from representatives of the former prisoners of Belene, a total of US\$100 for each year spent in the concentration camp has been granted to the victims. Furthermore, in 1991, the Prosecutor General of Bulgaria started an investigation into offences committed during this period. Nevertheless, no lawsuits reached the courts. According to the representatives of the above group, this was due to a failure to secure the testimonies of all the victims, some of whom have since passed away. Their application to the European Court of Human Rights was dismissed in 2004 as inadmissible *ratione temporis*, the incidents having occurred before Bulgaria’s accession to the Convention, and for non-exhaustion of domestic remedies.
34. During his visit, the Commissioner met with the representatives of the former Belene island prisoners and learned that their circumstances had not changed. Since the members of this group were elderly and had borne considerable suffering, the Commissioner strongly believes that regardless of practical problems that may hamper judicial proceedings, the authorities must strive for justice and provide reparation to all the victims regardless of their ethnic origin in accordance with the established principles of international law.⁹ In this context, the suffering of all victims of the “Revival Process” should be recognised without further delay by shedding full light on the period of 1984-1989.
35. The Commissioner also observes that the issue of the transfer of pension rights for the victims of the “Revival Process” remains unresolved. Today more than 150 000 ethnic Turks – who were forced to leave Bulgaria in 1989 and who now reside in Turkey – cannot transfer the social security premiums they paid whilst working in Bulgaria due to the lack of proper documents which still need to be provided by the Bulgarian authorities. As a result, the premiums they paid at the time are not presently being taken into consideration by the Turkish authorities when calculating their pensions. The Commissioner was satisfied to learn that Bulgaria and Turkey had formed a

⁹ International Law Commission, *Articles on responsibility of states for internationally wrongful acts*, Article 34 ff, in UN General Assembly Resolution 56/83 of 12/12/2001.

Joint Commission, co-chaired by the respective Undersecretaries of their Foreign Ministries which met for the first time in May 2009 to discuss pending issues including the transfer of the said social security rights.

III. Enjoyment by minorities of freedom of religion, association and assembly

1. The right to freedom of religion

36. The Commissioner notes with appreciation that under the 2002 Denominations Act, religious freedom is recognised as a fundamental right and that all religions are declared free and equal, the Church and the state being clearly separated. Religious denominations are registered upon application to the Sofia District Court which is being advised by a Directorate of Religious Affairs. The Commissioner has been informed that as of February 2008, 96 religious groups, in addition to the Bulgarian Orthodox Church, were registered, compared with 85 in February 2007. Reportedly, the system works well in spite of a dispute over the compulsory registration of local branches of denominations which certain NGOs consider to be unnecessary. The Denominations Act does not explicitly demand the registration of local branches, but it does require notification of their establishment to the competent authorities.
37. The Commissioner is aware of the observations of the Council of Europe Parliamentary Assembly (PACE) on the 2002 Denominations Act expressed in its Resolution 1390 (2004).¹⁰ Calling on the Bulgarian authorities to ensure that the right to freedom of religion (Article 9 of the European Convention on Human Rights) and the case law of the European Court of Human Rights are fully observed, PACE recommended, in particular, changes to Article 10 of the Denominations Act to ensure that the preferential treatment granted to Eastern Orthodoxy does not lead to discrimination against other religions for practical purposes, such as state or municipal support, restitution of property, taxation purposes or the teaching of religion. With regard to Article 7 of the said law, which prohibits and punishes the use of religion for “political objectives”, PACE recommended a narrow interpretation as the provision could otherwise exclude religious communities from public policy debates.
38. During his visit, members of the Muslim community informed the Commissioner that they had been trying in vain to claim back numerous properties nationalised under the communist regime, among them many mosques. They considered particularly prohibitive the 4% tax on the property value to be paid before restoration proceedings could be launched. He also learned of the plans to transform the only mosque intact in Stara Zagora into a museum of religion with the help of EU funds. The Muslim community is strongly opposed to this as the Hamzabey Mosque, built in 1409, is the oldest Muslim shrine in Bulgaria and an important place of worship for about 5 000 Muslims.
39. The Commissioner notes with concern the dispute which has been ongoing since 2002 regarding the construction of an Islamic Centre and a second mosque in Sofia and the March 2009 decision of the Burgas municipality to revoke the permission for a mosque to be constructed based on concerns for public peace and order. Likewise, there are continuing disputes over the construction of Jehovah’s Witnesses meeting halls in Veliko Tarnovo and Varna.
40. The Commissioner notes with appreciation that the restoration claims of the Jewish community, with whose representatives he met, have almost all been settled in full. He observes that property issues should be resolved domestically in line with the European Convention on Human Rights and the established case law of the European Court, instead of forcing the individuals to apply to Strasbourg. The Commissioner calls upon the Bulgarian authorities to provide a fast, efficient domestic procedure for dealing with property claims and restoring well-founded rights. In this

¹⁰ Text adopted by the Standing Committee, acting on behalf of the Assembly on 7/09/2004 (Doc. 10065 and corrigendum, Report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Contestabile).

regard, he highlights the need for an enhanced dialogue with the Muslim community to find alternative solutions to allow property claims to be settled promptly, including the most recent issue regarding the planned transformation of the Hamzabey Mosque.

41. The Commissioner notes with concern reports of harassment of certain religious groups, such as Jehovah's Witnesses and Mormons, following a letter sent by the City of Burgas to all schools in April 2008 to warn of these religious groups, describing them as dangerous sects. In November 2008, the Jehovah's Witnesses filed a complaint against the municipality. The Burgas Administrative Court rejected it on the basis that it was unable to verify that the identity of the claimant officially registered in Bulgaria matched that referred to in the letter. This religious group filed a second complaint which is still pending. In January 2009, the Religious Confessions Directorate warned the Jehovah's Witnesses of numerous complaints against them for engaging minors in religious conversations without their parents' consent. The Jehovah's Witnesses rebutted the accusations alleging their missionaries were guilty of entrapment. The group issued internal guidelines explaining that in domestic law it was prohibited to include minors in religious activities without parental consent.
42. The Commissioner further notes that Jehovah's Witnesses have been questioned by police and have been given written warnings for preaching from house to house which was considered to disturb public order. Mormons were banned from distributing materials in public places and engaging in religious conversations in public. On a positive note, the Commissioner observes that in 2007 the Commission for Protection against Discrimination decided in favour of a young female student who had lost her traineeship because of her membership in the Jehovah's Witnesses.
43. The Commissioner is aware that the European Court of Human Rights in 2009 found a violation of freedom of religion with regard to the 2002 Denominations Act and its implementation towards a religious community forcing them to unite under one of two leaderships when there was deep division in the Bulgarian Orthodox Church.¹¹ The Commissioner notes that the Committee of Ministers started to supervise the execution of this judgment by inviting the Bulgarian authorities to provide an action plan or report to be considered at the next human rights meeting in March 2010.
44. Likewise, the execution of two judgments by the European Court of Human Rights concerning unwarranted interference by the authorities in the internal organisation of the divided Muslim community between 1995 and 1997 under the old Denominations Act of 1949 are still subject to supervision by the Committee of Ministers.¹² The Commissioner was informed by the Chief Mufti, Dr Mustafa Alish Hadzhi, that the Sofia Court of Appeal reversed the decision of the Sofia City Court that had recognised him as the mufti following his election at the national conference in April 2008. A further appeal may be launched with the Supreme Court of Cassation. The Chief Mufti informed the Commissioner that due to the long and contradictory domestic legal proceedings, the Muslim community had lost confidence in the judicial authorities. They consider the 2002 Denominations Act to be defective as it does not afford them enough protection as a religious community against such civil proceedings.
45. Acknowledging the need for state supervision, the Commissioner believes that the law and procedures relating to the functioning of religious groups should be simple and avoid unnecessary, time-consuming and costly bureaucracy or legal proceedings which could act as deterrents. He recalls the case law of the European Court of Human Rights which requires legal provisions restricting freedom of religion to be clear and foreseeable.¹³ He thus recommends erasing any ambiguity in the Denominations Act to ensure that its Article 7 cannot be perceived or

¹¹ *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, judgment of 22/01/2009.

¹² *Hasan and Chaush v. Bulgaria*, Grand Chamber judgment of 26/10/2000; *Supreme Holy Council of the Muslim Community v. Bulgaria*, judgment of 16/12/2004.

¹³ *Hasan and Chaush v. Bulgaria*, Grand Chamber judgment of 26/10/2000, para 86.

applied in a manner that has a detrimental effect on the enjoyment of the freedoms and rights of members of religious groups. Local authorities and law enforcement officers need to be properly instructed with the help of the case law of the European Court to avoid unnecessary interference with freedom of religion. The Council for Dialogue Among Religions could act as a useful forum for discussing concrete proposals.

2. *The right to freedom of association and assembly*

46. As regards freedom of association, which includes the creation and operation of political parties, the great importance for democracy of this freedom for persons “seeking an ethnic identity or asserting a minority consciousness” has been emphasised by the European Court of Human Rights.¹⁴ In this regard, political parties are essential for the proper functioning of democracy and their existence should be allowed and facilitated as long as their ideas do not threaten democracy itself.¹⁵
47. To strike a balance, restrictions upon the right to freedom of association may only be imposed by states in accordance with Article 11, paragraph 2, of the European Convention on Human Rights. As stressed by the European Court, this power must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom.¹⁶
48. In order to protect the unity and integrity of the state, Article 11(4) of the Bulgarian Constitution prohibits the existence of political parties on ethnic, racial or religious lines. The Commissioner is aware of the concern expressed by the Venice Commission and shared by ECRI that such provisions could be used to prevent linguistic, ethnic or religious minority groups from organising themselves.¹⁷ The Commissioner recalls that the European Court of Human Rights has repeatedly held that restrictions on the rights to freedom of association and assembly must always be proportionate to the objectives pursued¹⁸ and that the Court has found Bulgaria in breach of the Convention in cases concerning the Macedonian minority.
49. In 2005 and 2006, the European Court of Human Rights held that Bulgaria violated the right to freedom of association and assembly due to the unjustified dissolution of the party in 2000 and the domestic court’s refusal to register a Macedonian association in 1998/99 as well as prohibiting without justification several commemorative meetings between 1998 and 2003.¹⁹
50. The Commissioner notes that the execution of some of these judgments is still pending before the Council of Europe Committee of Ministers. He noted with satisfaction that Macedonian organisations were able to hold meetings in 2008 and that a Bill for a new Meetings and Marches Act was submitted to Parliament at the end of 2008. He would appreciate receiving from the authorities further information on this issue. As for the registration of political parties, the Commissioner commends the amendment made in January 2009 to the Political Parties Act 2005, decreasing the number of members required from 5 000 to 2 500. The Commissioner was informed that in the case of the dissolution of the political party Umo Ilinden-PIRIN, the Supreme

¹⁴ See Grand Chamber judgment in the case of *Gorzelik and others v. Poland*, 17/02/2004, para 92 ff.

¹⁵ See, *inter alia* *Freedom and Democracy Party (Özdep) v. Turkey*, Grand Chamber judgment of 08/12/1999, paras 37-48. See also European Commission for Democracy Through Law (Venice Commission), “Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures”, 10/01/2000.

¹⁶ See Grand Chamber judgment in the case of *Gorzelik and others v. Poland*, 17/02/2004, para 95.

¹⁷ Opinion O. 444/2007, European Commission for Democracy through Law (Venice Commission), CDL-AD(2008)009, 31 March 2008, para 64; ECRI, *op. cit.*, p. 12.

¹⁸ See, for example, *United Communist Party of Turkey and Others v. Turkey*, judgment of 30/01/1998 and *Sidiropoulos and Others v. Greece*, judgment of 10/07/1998.

¹⁹ See the judgments against Bulgaria in the cases of *United Macedonian Organisation (UMO) Ilinden-PIRIN and others*, judgment of 20/10/2005, *UMO Ilinden and others*, judgment of 19/01/2006, *UMO Ilinden and Ivanov*, judgment of 20/10/2005, *Ivanov and others*, judgment of 24/11/2005.

Court of Cassation in May 2009 decided as last instance that the party could not demand re-registration as they had not respected the formalities of the relevant law at the time, that is, the 2005 Political Parties Act. Until this final decision, the party had sought re-registration since January 2006 in two complete sets of domestic proceedings.

51. The Commissioner is aware that the Committee of Ministers ended the supervision of this case by issuing a Final Resolution in December 2009 and that four new applications are pending before the Court, raising again the questions of registration of the UMO Ilinden party as well as allegedly over-restrictive measures concerning several rallies between 2004 and 2008.²⁰ In particular, the applicant UMO Ilinden-PIRIN party claims that the two rejections of their requests for re-registration violate their right to freedom of association and amount to a failure to abide by the European Court's judgment in the 2005 case of *UMO Ilinden-PIRIN and others*, in breach of Article 46 of the Convention.²¹
52. The Commissioner believes that domestic law potentially restricting freedom of association should be precise and its application proportionate to the aims pursued in the context of a democratic society. Regardless of the outcome of the new applications lodged with the Court, the Commissioner considers necessary the establishment by the authorities of an open, sincere and systematic dialogue with all minorities in Bulgaria, including the Macedonian one, in line with the Council of Europe standards. Furthermore, it would send a positive signal to all minority groups if the domestic law, including the Constitution, could be amended in such a way that the rights to freedom of association and assembly enshrined in the European Convention on Human Rights were better safeguarded in practice for minorities.

IV. Enjoyment by minorities of social rights

1. Education

53. The Commissioner is aware of the numerous activities²² carried out by the Bulgarian authorities in the field of education with a view to better integrating children of minorities, in particular Roma children, into schools (on Roma, see also section V below). He notes with appreciation that the Bulgarian authorities have adopted a Strategy for the School Integration of Children and Teenagers from Ethnic Minorities (2004). Implementing this strategy, Turkish is taught as a mother tongue from year 1 to 8. However, the Commissioner notes that reportedly only 20 000 to 30 000 Turkish children receive their education in their mother tongue, allegedly using outdated textbooks. He would appreciate more information on further measures taken or envisaged in this field and whether and to what extent minority languages are taught at universities.
54. The Commissioner commends the active involvement of civil society in the field of education. Yet he is worried at reports indicating that, despite all these programmes, concrete progress remains slow and numerous problems persist, particularly with regard to Roma, Turks and Pomaks who generally have a lower level of education compared with the majority of the population.
55. The Commissioner notes with concern that no systematic evaluation of the measures taken so far seems to be available which might also be due to a general lack of data on the situation of children belonging to minorities. He considers necessary such data collection and a thorough

²⁰ See Statement of Facts of 3/10/2008 in the joint communicated cases against Bulgaria of *UMO Ilinden-PIRIN and others*, lodged on 14/08/2007 and 11/04/2008. *UMO Ilinden and others*, lodged on 15/09/2004; *UMO Ilinden and Ivanov (II)*, lodged on 6/10/2004 and *Singartiyiski and others*, lodged on 18/10/2007.

²¹ Statement of Facts of 3/10/2008 in the joint communicated cases against Bulgaria of *UMO Ilinden-PIRIN and others*, lodged on 14/08/2007 and 11/04/2008.

²² "Action Plan for the Implementation of the Decade of Roma Inclusion", "Action Plan for the Framework Programme for Equal Integration of Roma in Bulgarian Society (2006)", "National Programme for the Development of Primary, Secondary and Preparatory Education (2006-2015)".

evaluation of the programmes with a view to assessing the social inclusion of minority groups' members.

56. The Commissioner has noted that no official data seems to exist for evaluating the employment situation of minority groups. The Commissioner reiterates that education is the key to effectively addressing both unemployment and precarious, unskilled forms of employment. Thus, it would be highly advisable to carry out research into the areas of education and employment which mostly affect the situation of all socio-economically disadvantaged minority groups. Measures taken in the field of education should be carefully evaluated with a view to assessing and improving their impact on the employment of minority groups.

2. Employment

57. The Commissioner notes with appreciation that the Ministry of Labour and Social Policy adopted a number of measures to improve the access of Roma to the labour market. In 2007, about 22 000 Roma participated in programmes to increase their professional qualifications and competitiveness on the labour market as well as to motivate them to establish a career path and actively seek employment. Programmes to develop entrepreneurship among the Roma community were developed. The Employment Agency regularly organises job fairs for Roma in areas with a predominantly Roma population. It also employs Roma experts to improve its services for Roma and to train its staff to work with unemployed Roma. Nevertheless, according to NGO information, unemployment remains particularly high among Roma with a rate of 70% to 80%.
58. During his visit, the Commissioner learned that discrimination is still an important factor preventing certain minorities, in particular Roma, from accessing employment. The Commissioner is aware that domestic, anti-discrimination legislation prohibits discriminatory recruitment and obliges employers to combat discrimination in the workplace. In this context, the work of the Commission for Protection against Discrimination is highlighted and the need to support and reinforce such activities underlined.
59. The employment situation of Turks is unsatisfactory, too, with an estimated unemployment rate of 36%. Economically, Pomaks are worse off than the majority of the population which is also due to their generally lower level of education. Consequently, they work in poorly paid sectors (building industry, harvesting) and poverty is widespread.²³ In view of this situation, a systematic evaluation of all employment-related measures taken or planned with a view to increasing their effectiveness towards all minority groups concerned is highly advisable.

3. Health

60. The Commissioner notes with appreciation that the Bulgarian authorities are currently implementing their "Health Strategy concerning people in disadvantaged positions, belonging to ethnic minorities" as an integrated part of the National Health Strategy.²⁴ In this context, he welcomes the various measures taken to improve the situation of Roma who still suffer from numerous health problems often due to poor housing conditions and unhealthy working conditions. A total of 111 health mediators were recruited to facilitate the access of Roma people to health care and 23 mobile health units now operate in the country. Recent regulations provide free-of-charge hospitalisation to persons without income as well as obstetrical care for women without insurance. These measures could have a wider impact if the procedures are simplified. The Commissioner hopes that the measures taken or planned will also include ethnic Turks and Pomaks, groups that are socio-economically disadvantaged and face similar health problems.

²³ ECRI, op. cit., p. 30; see also ENAR, op. cit, p. 9.

²⁴ www.ncedi.government.bg/en/HealthStrategyENG.htm

61. The Commissioner is concerned about reports that in Bulgaria, people have no health insurance if they do not receive or are no longer receiving unemployment benefits and that a relevant fund set up does not appear adequate to meet the needs of people.²⁵ According to official statistics, 46% of Roma do not have any health insurance.²⁶ The Commissioner notes that other minority groups could be affected as well and would like to be informed of how and to what extent people not covered by the Health Insurance Act may access health care.
62. The Commissioner commends the active involvement of NGOs in implementing the programmes under the health strategy and notes that the health of the Roma population has reportedly started to improve.²⁷ He thus encourages the Bulgarian authorities to continue and even enlarge the programmes and to ensure widespread dissemination of information to members of minority groups as well as effective co-operation between the different authorities involved.

4. Social assistance

63. The Commissioner notes that the Bulgarian Constitution provides for the right to social assistance.²⁸ He is aware that legislative attempts to restrict this right by amending the Social Assistance Act in such a way that social assistance for unemployed persons of working age can be interrupted after 6, 12 or 18 months of unemployment was found in breach of Article 13 paragraph 1 of the revised Social Charter.²⁹ In its 2009 decision concerning Bulgaria, the European Committee of Social Rights stressed that the above legislative proposals are likely to have a considerable impact on some of the most disadvantaged groups in Bulgaria, particularly on Roma as they face particular difficulties in accessing the labour market and thus depend to a large extent on social assistance. The Commissioner trusts that the Bulgarian authorities will give full effect to the decision and safeguard the constitutional right to social assistance for Bulgarian citizens, including those who are particularly vulnerable, such as members of minority groups.

V. Issues concerning the human rights of Roma

64. According to the 2001 national census, 370 908 individuals, i.e. 4.6% of the total population stipulated that they were Roma. NGOs active in the field estimate the Roma population between 700 000 and one million. During the communist period, Roma were also subjected to forced assimilation, which included them having to change their names and being forcibly resettled in fixed communities. After 1989, the situation of Roma appeared to improve. Roma newspapers resumed publication, political organisations were formed and cultural activities expanded. Yet Roma remained predominantly socially excluded, marginalised and segregated and still live in poverty with little access to health care and education. The situation started to improve slightly in 1999 when the Bulgarian authorities and Roma representatives agreed on a Framework Programme for Equal Integration of Roma.
65. Over the last few years, the Bulgarian authorities have undertaken important steps in the fight against different forms of discrimination towards the Roma population in the fields of education, health, housing and employment, through strategies and action plans. Bulgaria is participating in the Decade of Roma Inclusion. To the four priority areas (education, health care, housing and employment), Bulgaria has added the fight against discrimination as well as culture to its action plan. The Commissioner commends this approach which further extends the field of inclusion of Roma.

²⁵ ECRI, op. cit., p. 25.

²⁶ www.ncedi.government.bg/en/HealthStrategyENG.htm

²⁷ ECRI, op. cit., p. 25.

²⁸ Article 51, para 1 of the Bulgarian Constitution reads: "Citizens shall have the right to social security and social assistance".

²⁹ *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 48/2008, decision on the merits, 18/02/2009.

66. Nevertheless the situation of Roma communities on the ground remains of concern as is still the case in many other Council of Europe member states. In addition to the health care and employment difficulties mentioned earlier (see Section IV), the main problems which require intensified efforts include segregated Roma neighbourhoods, forced evictions from and demolition of houses and improved access to a good standard of education.
67. Roma NGOs have indicated that violence by police against Roma continues to be reported. In 2009, the NGO, Romani Bath Foundation, reported over 30 attacks by groups of skinheads against Roma in Sofia alone. The Commissioner calls upon the authorities to thoroughly investigate these allegations and prosecute the perpetrators. Preventive measures should also be taken, including continuous training of members of the police, in an effort to improve relations between the Roma community and the police force.

1. Housing

68. The government adopted an Action Plan for 2007-2008, as part of the National Programme for Improving the Living Conditions of Roma and a number of municipalities adopted development plans for improving the living conditions of Roma. Several municipalities also developed cadastral plans for compact Romani settlements. However, the Commissioner was informed that funds allocated for social housing remain insufficient and, in some places, their construction is blocked due to lack of co-operation with the local authorities. Furthermore, Roma are reportedly discriminated against in the housing sector, particularly when trying to rent or buy real estate.³⁰ The Commissioner notes with concern that many Roma still live in sub-standard housing and often encounter difficulties in obtaining documents they should already have received showing proof of ownership. This causes particular problems in cases of eviction as the title deeds are required to obtain compensation. The Commissioner observes that Roma are disproportionately affected by evictions. Often their dwellings are destroyed without alternative accommodation being provided. The Commission for Protection against Discrimination has also received complaints from Roma regarding their applications for proposed housing developments that were turned down by the municipalities.
69. The Commissioner trusts that the 2005 - 2015 National Programme to Improve the Housing Conditions of Roma will be speedily implemented, legalising housing and improving material standards in due consideration of the relevant decision of the European Committee of Social Rights.³¹ The implementation of the above programme should be continuously evaluated to avoid possible shortfalls while Roma NGOs as well as the families concerned should be involved from the very outset before concrete measures are taken in this domain.
70. During the Commissioner's visit in November 2009, the Bulgarian authorities indicated that they were working on cadastral and zoning maps, work which is still in progress. Roma face extreme difficulties as their neighbourhoods do not have building or zoning maps in urbanised areas. When zoning exists, they often do not have all the documentation proving their property rights due to illiteracy or lack of knowledge of the laws. In smaller municipalities, their dwellings are often built outside the residential districts in agricultural areas or zones under a specific regime.
71. In February 2008, the Commissioner visited a Roma neighbourhood in Batalova Vodenitsa, Sofia, where approximately 200 people resided. Although located in the middle of the capital, the Commissioner noted that the Roma in that neighbourhood were segregated and lacked basic facilities, including individual access to drinking water and a regular supply of electricity. During his visit in November 2009, the Commissioner visited the Roma settlement in the Republika

³⁰ ENAR, op. cit. p.10.

³¹ *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on the merits, 18/10/2006. Regarding the housing conditions and the circumstances of eviction of Roma families, the committee found a violation of Article 16 of the revised European Social Charter (right of the family to social, legal and economic protection) together with Article E (non-discrimination).

district of Sofia. The site was created in 2001 for Roma families who had been evicted from their homes following a decision by the municipality. After the demolition of their dwellings, families were offered metal containers of about 9 square metres as alternative accommodation. Approximately 200 residents now live in squalor with no proper infrastructure. There is only one tap to supply water for the whole settlement and no access to any toilets or sewage system. The Commissioner regards these living conditions as unacceptable.

72. The concerns of the Roma people regarding the risk of forced evictions cannot be ignored as there are still reports of such cases from different parts of the country. During his last visit, the Commissioner was informed of the demolition of Roma houses in Burgas in September, leaving 200 people, including children and elderly, homeless just before the winter. The Commissioner stresses the need for immediate, concrete steps by the Bulgarian government in co-ordination with the local authorities to ensure sustainable and healthy living conditions for the Roma population in close consultation with the people directly concerned.
73. The Commissioner reiterates that forced evictions should be avoided when there is a real risk of violating the European Convention on Human Rights, notably the right to respect for private and family life (Article 8) and the prohibition of degrading treatment (Article 3).³² He invites the authorities to provide suitable alternative accommodation in cases of eviction. Recalling his recent Recommendation *on the implementation of the right to housing* of 30 June 2009, the Commissioner insists that effective legal remedies should be available to all persons affected by eviction orders. Moreover, the conditions for legalising constructions which had hitherto been illegal should be relaxed to allow the authorities to tackle the housing shortage facing Roma families.

2. The right to education of Roma children

a. Mainstream education

74. The Bulgarian Constitution and the Public Education Act provide for every child's right to an education. Education is mandatory from 7 until 16 years of age, with primary and secondary education in state and municipal schools free of charge. Enrolment in kindergarten is at the discretion of parents or guardians. In grades I to IV, transport, textbooks and snacks are provided free of charge.³³ According to UNICEF, 73.2% of infants have access to preschool education which is proportionally much higher than in other neighbouring countries.
75. The Commissioner is aware of the measures taken by the Bulgarian authorities in the field of education with a view to better integrating children from minorities into schools, in particular, Roma children.³⁴ He is pleased to note that the authorities, in 2004, adopted the Strategy for the School Integration of Children and Teenagers from Ethnic Minorities. Furthermore, Roma teaching assistants have been hired by the Ministry of Education, municipalities and NGOs. The Commissioner commends the active involvement of civil society in this field, but is disappointed to learn that despite all these programmes, concrete progress remains slow and many problems persist, particularly with regard to Roma children. Indeed, between 60% and 77% of Roma children enrol in primary education whereas only 6% to 12% of Roma teenagers enrol in secondary education.³⁵

³² See, *inter alia* *Moldovan and others v. Romania*, judgment no. 2, 12/07/2005.

³³ UN CRC, "Second periodic reports of States parties due in 1998: Bulgaria", CRC/C/BGR/2, 01/11/2007, para 111.

³⁴ "Action Plan for the implementation of the Decade of Roma Inclusion", "Action Plan for the Framework Programme for Equal Integration of Roma in Bulgarian Society for 2006", "National Programme for the Development of Primary, Secondary and Preparatory Education (2006-2015)".

³⁵ "Equal access to quality education for Roma", Volume 1, Monitoring reports, 2007, Open Society Institute, EU monitoring and advocacy program (EUMAP), pp. 32-34.

76. The Commissioner notes with satisfaction that, since 2004, free-of-charge preschool education has been made mandatory for children in the year prior to them enrolling in first grade. The Commissioner welcomes the programmes developed by the authorities to integrate Roma children into kindergartens and schools outside Roma neighbourhoods: As a consequence, 3 500 pupils living in predominantly Roma neighbourhoods have been integrated into comprehensive schools in the community at large.³⁶ The Commissioner also welcomes the implementation by the Ministry of Labour and Social Policy of the programme for “Child welfare reform” aimed at preparing children of preschool age from disadvantaged families (mainly of Roma origin) for enrolment in first grade. This has led to some 12 500 children and pupils from socially disadvantaged Roma families in 32 municipalities in the country benefiting from financial aid.
77. The Commissioner notes, however, that parents complained about the charges imposed on them by kindergartens which amounted to between 20 levs and 40 levs (approximately €10 to €20) per month. These charges made it impossible for families with low or no income, including Roma, to enrol their children into school. Similarly, the UN Committee on the Rights of the Child regretted that the places available in preschool facilities were not being fully utilised for preparing children with disabilities and Roma children for school.³⁷ It therefore recommended extending the early childhood development programmes and preschool education to more children, particularly Roma children.
78. The Commissioner notes with concern the structural reform introduced into all schools in Bulgaria in January 2008. As a result of this reform, an annual allowance for each child enrolled into school is granted by the state authorities to his or her school to cover all expenses relating to education, teachers’ salaries and those of other staff as well as building maintenance. The school budget is therefore solely determined on the basis of the number of students enrolled in the school. The decentralisation of the budget is a further consequence of this reform and gives the school director the freedom to determine the school’s financial priorities, whether it be utilities, teachers’ salaries or out-of-school activities.
79. The Commissioner is concerned that, as a result of this reform and the way in which the budget is now determined, the future of schools with a low intake of pupils will be put in jeopardy since funding is likely to be insufficient to allow them to finance their activities and/or staff costs. By way of illustration, 320 schools (mostly located in small settlements) were closed in March 2008 which represents around 15% of the primary schools in Bulgaria.³⁸ Of further concern to the Commissioner is the significant impact of the school budgetary reform on the process of Roma educational integration. As many Roma children were enrolled in rural or small schools and many of these schools have closed due to budgetary constraints, a significant increase in the drop-out rate has ensued. Indeed, many parents were reluctant to see their children making long journeys by public transport on a daily basis to get to the nearest municipalities - even though free transport was provided.
80. Schools that are still open, but have a limited number of children have seen their budgets slashed which has resulted in a reduction in the number of extra curricula activities that can be carried out. Many teachers in these schools have also had their salaries cut and there is also a strong possibility that good teachers will be more interested in transferring to the larger schools which have more substantial budgets and are thus in a position to offer higher salaries.³⁹ The Commissioner considers that this reform risks exacerbating the existing de facto segregation of Roma in schools in majority-Roma neighbourhoods or villages with fewer human and financial resources available.

³⁶ UN CRC, *ibid.*, para 108.

³⁷ UN CRC, “Concluding observations on Bulgaria”, 23/06/2008, CRC/C/BGR/CO/2, para 57.

³⁸ Centre Amalipe, “New challenges before Roma education integration”, n°1, August 2008.

³⁹ Centre Amalipe, *idem*.

81. The national study on causes of children dropping out of school has led to the development of a “National programme for the prevention of drop-outs” and a “National programme for school coverage of children in grades 1-4”, funded by the European Structural Fund. However, civil society considers that measures to tackle the problem of children dropping out of school are not going far enough. They consider that special actions are needed to target those children at risk in an effort to prevent them from dropping out of school. For the UN Committee on the Rights of the Child, the authorities’ declaration that education is a priority is incompatible with the low budgets for education. More than 25% of the children in rural areas do not even finish the eighth grade. The quality of education and the marked urban-rural disparities are a serious concern.⁴⁰ The Commissioner urges the authorities to analyse the impact of these new reforms on vulnerable children, including Roma, and to ensure that every school receives the necessary funding to provide a good standard of education.

b. Education of Roma children in special institutions

82. From 2001 to 2005, the Bulgarian Helsinki Committee reported that Roma made up half of all the students in schools for children with intellectual disabilities and about two-thirds of the students in boarding schools. In its 2009 report, ECRI expressed its concerns that Roma children with no specific disabilities continued to be placed in special schools, either because they had an insufficient grasp of the Bulgarian language or simply because these schools provided free meals which was a persuasive argument for many disadvantaged Roma parents.

83. During his visit, the Commissioner was informed that the number of auxiliary and boarding schools for Roma children was progressively decreasing. The authorities indicated that twelve reform schools which were largely attended by pupils of Roma origin were closed down in 2006-2007. An up-to-date evaluation of the pupils from these schools was conducted by integrated pedagogical evaluation teams within the regional education inspectorates and, on the basis of these assessments, it was concluded that the majority of Roma should be sent to mainstream schools. Of the reform schools which were closed down, two are in Roma neighbourhoods which lack a mainstream school.⁴¹

84. Like ECRI, the Commissioner is particularly concerned that reform establishments have a disproportionately high number of Roma children who are sometimes sent there by their parents because of their own socio-economic problems. The Commissioner calls for urgent measures to be taken to tackle this problem. Appropriate and targeted awareness-raising campaigns need to be immediately initiated to inform parents of alternative solutions as well as the possible short-term and long-term consequences of institutionalisation. The Commissioner urges the authorities to adopt a concrete and comprehensive action plan to deinstitutionalise these children.

VI. The protection of children’s rights

85. Over the last decade, Bulgaria has taken important steps towards developing an effective national child protection system. In 2000 an important child care reform was initiated with the adoption of the Child Protection Act (CPA). The following year, the State Agency for Child Protection (SACP) was established under the Council of Ministers as the authority responsible for children’s rights. The National Council for Child Protection was then set up as a consultative organ to the SACP with the participation of representatives from different governmental bodies and NGOs. Several action plans and programmes were also adopted, including a National Strategy for the Child for 2008-2017. Nevertheless, the Commissioner is extremely concerned that poverty affects 17% of children in Bulgaria which is one of the highest rates in Europe.

⁴⁰ UN CRC, *ibid.*, para 55.

⁴¹ ECRI, *op.cit.*, para 52.

86. During his visit the Commissioner held constructive discussions with the relevant authorities, including the newly appointed Chairperson of the SACP, Ms Nadia Shabani, and the Ombudsman, Mr Ginio Ganev. Both expressed the need to clarify the role and the responsibilities of the SACP. This institution has a duty to ensure that the UN Convention on the Rights of the Child and national policies regarding children are implemented. It also co-ordinates child policies and the action taken by the different administrative entities responsible at national and local level. The Commissioner was informed that co-ordination between the different administrations could be reinforced to ensure consistency in the implementation of policies throughout the country.
87. In addition to its co-ordination role, the SACP also monitors other administrative bodies involved in the protection of children. Recently, the agency was granted powers to control administrative bodies and to address recommendations in case of a breach of the CPA. If the recommendations are not implemented, the SACP has the authority to impose financial sanctions on the administration. These fines range from 2 000 to 5 000 levs (approximately €1 000 to €2 600). As stated by several interlocutors, the risk of a conflict of interests exists between the co-ordination role of the SACP and its sanctioning powers. Indeed, the SACP may have to control and sanction, on a regular basis, administrations or services with which it works for the protection of children. Therefore, the Commissioner considers that the authorities should examine the current situation in order to prevent further difficulties. The establishment of an independent control mechanism could be considered as an appropriate solution either within an existing body or with the creation of a new one.
88. Regarding juvenile justice, amendments to the Juvenile Delinquency Act were made and measures adopted regarding the deprivation of liberty by courts. However, further progress is required to improve respect for the rights of children in conflict with the law. The Commissioner notes with concern that “re-education” measures could be taken against children as young as 8 years old, including placement in “correctional-educational institutions”. The UN Committee on the Rights of the Child recently put forward a number of recommendations “to fully bring the system of juvenile justice in line with the Convention”.⁴²
89. The Commissioner recalls that a caring society should respond promptly, resolutely and fairly to juvenile offences. Where a child’s responsibility is in dispute, there should be a separate formal process, in accordance with the child’s age and ability, to determine his or her responsibility. However, this does not have to be a criminal process nor involve the criminalisation of the child. The objectives of juvenile justice should not be retribution, but the establishment of responsibility as well as his or her reintegration into society.

1. Human rights of children in institutions

90. In Bulgaria, there are approximately 8 000 children living in 138 institutions for children including 26 institutions for children with disabilities.
91. The Bulgarian authorities have taken important steps towards improving the living conditions of children in institutions by initiating a deinstitutionalisation process. Residential care for children has been transformed through the development of community-based services as an alternative to institutional services. Their priority has been to set a precedent by raising children in a family environment.
92. According to the law, children can only be placed in specialised institutions following a court order once all other alternatives have been exhausted. The court proceeds in the following order: (i) a child is placed in the family of relatives or close friends (ii) with a foster family or (iii) in a specialised institution, unless this runs counter to the interests of the child.⁴³

⁴² UN CRC, “Concluding observations on Bulgaria”, 23/06/2008, CRC/C/BGR/CO/2, para 69.

⁴³ UN CRC, “Second periodic reports of states parties due in 1998: Bulgaria”, CRC/C/BGR/2, 1/11/2007.

93. Concerns remain regarding the duration of such stays in institutions. Periodical reviews of placements do not appear to be a regular practice, nor do they cover every child. Furthermore, the rights of children to express their views during these reviews are not fully guaranteed. The Commissioner reminds the authorities that the decision to place children in an institution should be regularly reviewed and should take into consideration their best interests. They should also be granted the right to participate in the procedure and be allowed to express their views.
94. Structural reform in residential institutions started with their decentralisation. In 2003, the responsibility for social care homes for children with disabilities was devolved to the municipalities. Then in 2007, the responsibility for homes for children without parental care was transferred to the local authorities. Only homes catering for the needs of new born babies and children up to 3 years of age remain within the scope of central government, i.e. the Ministry of Health.
95. Civil society considers that the reform in childcare has faced a number of difficulties, mostly due to lack of preparation in the decentralisation process. It would appear that local administrations were not fully prepared or equipped to exercise effective control over the new services under their control. The lack of experienced professionals and skills to efficiently manage the funds serve to illustrate this problem.
96. The Commissioner understands that a number of municipalities still lack both the skills and knowledge to adequately manage the residential care institutions for children as well as those to address the special needs of these children. As witnessed during the visit, expertise at local and national level exists, however, there is no information-sharing system and municipalities do not receive sufficient support from the national authorities. The Commissioner considers necessary the establishment of national mechanisms able to offer financial and other support and guidance to local authorities with regard to their new responsibilities.

a. Living conditions of children in institutions

97. Living conditions vary greatly from one institution to another. If several receive the necessary public or private funding to be appropriately equipped and staffed, others face important financial difficulties. During his visit the Commissioner noticed that efforts were being made in a number of institutions to significantly improve the living conditions. However, the process of decentralisation has further increased the discrepancy between the different institutions. During his visit to the home "Rainbow" in Sofia for children with intellectual disabilities, the director indicated to the Commissioner that the institution receives an allowance for each child from the state authorities. This annual allowance amounts to 7 500 levs (approximately €3 900) for 2009. According to the director, the funds allocated were insufficient to satisfy the basic needs for food, accommodation and heating. The institution would not have been able to function and pay its staff without the additional support from the municipality as well as private donors.
98. The current financial downturn in Bulgaria risks further decreasing the means available. Indeed, the support provided to institutions by municipalities and private entities has already dwindled. Bearing this in mind, the Commissioner notes with great concern the statement made by the Ombudsman after having undertaken several inspections of institutions: "The most grievous problems are related to improving and maintaining the living standards of abandoned children and children with disabilities placed in specialised institutions".⁴⁴
99. Standards and rules are not homogenous across the country. Public and private sectors apply different standards and each municipality has a lot of leeway with regard to managing institutions. Like the UN Committee on the Rights of the Child, the Commissioner considers necessary that rules and practices be harmonised.

⁴⁴ Bulgarian Ombudsman, "Annual report", 2008.

100. For children with disabilities, placement could also be improved by taking account of the individual needs of the child. Lack of funding rarely allows for a detailed evaluation of the child's needs upon admittance or during his or her stay in the institution. The Commissioner was informed that the Ombudsman had received a number of complaints regarding poor health care in institutions for children with disabilities. For children without parental care, similar reviews of their situation are also lacking. The Commissioner invites the authorities to establish an individual care plan for each child institutionalised which should be reviewed at regular intervals.
101. The Commissioner would like to pay tribute to the difficult, but crucial work undertaken by the staff of institutions and alternative structures working with and for children in need. They are fundamental elements in safeguarding the rights of children under their control. However, civil society has indicated that the qualifications and training of staff could be improved. It appears that in a limited number of cases – mostly in large, old institutions in rural areas - employees, including directors, are reluctant to implement national policies, including the deinstitutionalisation process. In addition, some institutions or alternative structures face difficulties in recruiting specialised medical experts. The Commissioner underlines the need for all staff working for children in institutions to receive appropriate initial and ongoing training as well as the budget needed to fulfil their duties. National policies also need to be fully implemented throughout the country.

b. The deinstitutionalisation process

102. The law stipulates that institutions should be a last resort when it comes to placing children in out-of-home care. However, in practice institutions are the only real option in many cases. The state authorities as well as civil society have taken a number of initiatives to improve the life of children in institutions and have endeavoured to accelerate the deinstitutionalisation process. This willingness on the part of the national authorities to improve the situation has been warmly welcomed. The SACP is a body mandated to carry out inspections and, in 2004 and 2006, it reviewed all institutions housing children throughout the country. Following this review, recommendations were issued on reforms to be implemented in every institution for children and, in a number of cases, the agency even recommended the closure of some institutions because they were situated in remote locations, lacked staff or offered a sub-standard quality of care.
103. Since 2006, 10 homes for children have been closed down, three of these in 2009 alone, including a home for children with intellectual disabilities in Mogilino. These children have since been integrated into family environments or accommodated in family-type structures. Indeed, since 2007, the authorities have endeavoured to develop family-type accommodation centres which have resulted in the construction of some 30 centres today, housing up to a total of 353 children. However, according to civil society, a number of institutions have, regrettably, not been closed down, only reclassified.⁴⁵
104. Three Ministries (of Health, of Labour and Social Policy and of Education and Science) and at least ten administrative authorities are responsible for the protection of children in institutions. In addition, private entities or NGOs manage a number of institutions. Based on information received, it appears that the exchange of information among the different authorities could be improved. The UN Committee on the Rights of the Child invited the authorities to enhance co-ordination between all persons involved in the care of children deprived of a family environment, including the police, social workers, foster families and the staff of public and private orphanages. In his discussions with the Commissioner, the Ombudsman called for a single mechanism to co-ordinate, monitor and evaluate social services for children.

⁴⁵ Bulgarian Helsinki Committee, "Assessment Report on the Conditions and Perspectives of the Institutions for Children in Bulgaria and of the Progress made in Implementing the Governmental Obligations under the UN Convention on the Rights of the Child", November 2006, p.43.

105. The Commissioner was informed that national law provides for a number of measures which guarantee support for parents raising their children in a family environment.⁴⁶ According to the law, every parent and all persons caring for a child may request support from the Social Assistance Directorate and the SACP. Receiving this support appears to be limited. The Commissioner was informed that some parents of newly born babies diagnosed with intellectual disabilities - especially those with Down's syndrome – were still being advised to place their babies in an institution due to the lack of alternatives.
106. Institutions for children with intellectual disabilities from birth up to 3 years of age are under the responsibility of the Ministry of Health. This particular responsibility is seen by many stakeholders, including parents, as problematic, particularly since the Ministry of Labour and Social Policy takes over the responsibility for these children as from the age of 3 years. This situation has brought about a lack of continuity of care. Secondly, it appears that in these institutions, children are seen more as patients and, as a result, stimulation and contact with adults or other children are sometimes limited. The Commissioner calls on the authorities to evaluate whether it would be possible to transfer the responsibility for all the institutions for children to the same national authority as well as undertake a thorough assessment of the care provided to children with disabilities between birth and 3 years of age.
107. Despite efforts made by the authorities, community-based alternatives for children placed or at risk of placement remain limited. The UN Committee on the Rights of the Child was concerned about the insufficient number of foster families and the inadequate training offered to them which results in a high proportion of children still being placed in institutions.⁴⁷ Civil society as well as parents met during the visit confirmed these problems. There are 68 day-care centres for children and youths with disabilities with a capacity to accommodate just under 2 000 children for the whole country.⁴⁸ Their lack does not allow each centre to offer tailor-made support to children. Civil society considers that parents are not sufficiently and sustainably supported. Homes for groups of small children providing family-type care (or as good as) are only available in one city in Bulgaria for 40 children aged between three years and seven years old. On 30 June 2009, there were only 218 children living with foster families in Bulgaria. The Commissioner considers that the deinstitutionalisation process cannot be successful without a sufficient and adequate network of alternative structures.
108. Where alternatives exist, full use is not being made of them. The children's home N°8 "Rainbow" visited by the Commissioner in Sofia offered day care and/or care for up to a week. However, only five children were benefiting from this service. Further opportunities should be offered to parents both in terms of preventing placement as well as allowing children to live in a family environment. Where they exist, these alternatives should be made known to parents and carers.
109. The Minister of Labour and Social Policy indicated that national authorities are currently preparing a concept paper to set clear policies and alternatives so that the deinstitutionalisation process can be implemented. The Commissioner calls upon the Bulgarian authorities to develop further and implement rapidly the deinstitutionalisation process including through the development of preventive measures.

⁴⁶ These measures include: providing pedagogical, psychological and legal support to parents or persons to whom parental rights have been entrusted on issues relating to the upbringing and education of children; consultations for parents or persons to whom parental rights have been entrusted on issues regarding social assistance and social services; ensuring co-operation to improve social and economic conditions; social work to facilitate the relations between children and parents and family conflict and crisis resolution; support to those looking to adopt in preparation for assuming their parental rights; support during the adoption itself as well as protection of the rights of the child in ending the adoption.

⁴⁷ UN CRC, "Concluding Observations on Bulgaria", 23/06/2008, CRC/C/BGR/CO/2, para 35.

⁴⁸ Information provided by the SACP during the Commissioner's November visit.

110. Finally, during the visit, the Commissioner expressed his concern that the deinstitutionalisation process could create a so-called “lost generation”. Children who are currently living in institutions may suffer from certain measures taken or the delay in implementing new policies. A number of NGOs also expressed their concerns about the fate of children in institutions that have just turned or will shortly be turning 18 years of age. Adequate structures are often lacking for them. The risk exists that these young adults could be forced to go back and live with their family or relatives without any preparation or reintegration plans.

2. The right to education of children with disabilities

111. In Bulgaria, children with intellectual or physical disabilities can be educated either in mainstream schools, specialised schools called “auxiliary schools” or within the institution where they live. While education in mainstream and auxiliary schools is under the control of the Ministry of Education, the training and education provided within the institutions are under the responsibility of the Ministry of Labour and Social policy. There are about 20 000 children with disabilities in Bulgaria of which 5 573 are integrated into mainstream schools and 7 700 are in special schools. As this shows, the vast majority of children living in institutions continue to be educated within the institution itself.
112. In June 2008 the European Committee of Social Rights (ECSR) adopted a decision regarding access to education of children with disabilities in Bulgaria.⁴⁹ In its decision, the Committee found that children with moderate, severe and profound intellectual disabilities living in “Homes for Mentally Disabled Children” did not have an effective right to education. It considered that Bulgarian education standards were inadequate because mainstream education was not accessible to them. Only 2.8% of children living in institutions were integrated into mainstream primary schools and only 3.4% attended special classes within the institution. Furthermore, mainstream schools and teachers were not equipped or trained to meet the needs of children with intellectual disabilities.
113. State authorities announced their willingness to include the majority of children with disabilities in mainstream schools and several measures were taken to this end. Firstly, in January 2009, a Regulation for the Education of Children and Pupils with Special Educational Needs and/or Chronic Diseases was adopted⁵⁰ which recognises the need to integrate children with special educational needs into mainstream schools. The regulation describes the procedure to determine whether a child should attend an auxiliary or a mainstream school. It also sets out collective and individual educational plans on which the educational needs of children are to be based. This step towards more adaptable curricula was welcomed by civil society. Secondly, a draft law on preschool education as well as amendments to the Public Education Act are currently being discussed within the government. The Commissioner commends the announcement made by the Deputy Minister of Education that civil society will be included in the drafting process.
114. The Ministry of Education invested approximately one million levs (approximately €512 000) in 2008 and 780 000 levs (approximately €400 000) in 2009 to structurally adapt schools. A resource centre was established in each of the 28 regions of Bulgaria. The aim of these centres is to help both integrate children with special educational needs into mainstream educational establishments and draw up a comprehensive state policy. Resource centres function with the help of a team of specialists comprising resource teachers, psychologists, and speech and hearing specialists. They can provide support to children with disabilities attending mainstream schools.

⁴⁹ *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No.41/2007, decision on the merits, 03/06/2008.

⁵⁰ Regulation n° 1/2009 for the “Education of Children and Pupils with Special Educational Needs and/or Chronic Diseases”, 23/01/2009.

115. The authorities recognise, however, that further efforts are needed. The Deputy Minister of Education acknowledged that the procedure to determine what type of school a child could attend is complex and cumbersome. The fact that the Ministry of Labour remains responsible for the schooling provided within institutions is another source of concern. The collection and treatment of data could be improved and harmonised as the Ministry of Education and the SACP recognised that they have different data. The authorities also admitted that there should be an increase in the funds allocated to the resource centres so that more staff can be employed and the quality of the work of these centres is enhanced.
116. In his discussions with the authorities, the Commissioner was informed of cases where children with disabilities living in institutions were not educated in mainstream or auxiliary schools so that the educators could safeguard their own jobs within the institutions. The closure or the merger of auxiliary schools has also led to children missing out on an education because the buildings constructed in their place were not appropriately equipped or were situated too far from their homes. More generally, it appears that co-ordination between the child protection system and the educational system should be improved to adjust the scope of their activities and integrate and retain children at school.
117. Representatives of civil society expressed their doubts about the authorities' objectives regarding access to education for children with disabilities. By way of illustration, it was highlighted that children in special schools cannot repeat a year. Even if they do not reach the educational standards required, they are still allowed to move up to the next level - which is not the case for other children. This proves that these special schools are not really there to provide a good standard of education, but to keep these children occupied until they reach 16 years of age – the age limit for compulsory schooling. The Commissioner calls the authorities to address this problem.
118. The Commissioner considers that specific measures should be taken to include children in the mainstream education system. Like the ECSR,⁵¹ he considers that the integration of children with disabilities into mainstream schools in which arrangements are made to cater for their special needs should be the norm and teaching in specialised schools must be the exception. Therefore, he invites the authorities to adopt a timetable for eliminating both segregation in schools and practices which deny children schooling in accordance with the 2008 ECSR decision concerning Bulgaria⁵². In this process, civil society should be seen as an active partner. The work realised by the Bulgarian Helsinki Committee and the Mental Disability Advocacy Center in the follow up to the ECSR decision could be useful elements for further dialogue and improvement.⁵³ In addition to legal reforms and an increase in the resources available, the authorities should prepare teachers, children and parents for the day when children with disabilities can enter mainstream education.
119. Inclusive education does not mean the integration of children with different levels of ability into one school; it is not so much about where children are educated as the education itself being available, accessible, inclusive and adapted to children's needs. Education should cater for a range of needs which is only possible if a different culture exists in schools. Every child is entitled to receive a good standard of education. The Commissioner invites the authorities to ensure that any improvements in the education offered to children with disabilities are made promptly and do not to leave any child behind. Appropriate reforms should be put in place to ensure that activities pursued by intellectually disabled children living in institutions – who attend neither mainstream

⁵¹ *Autism-Europe v. France*, Complaint No.13/2000, decision on the merits, 4/11/2003, para 49.

⁵² *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No.41/2007, decision on the merits, 03/06/2008.

⁵³ MDAC & Bulgarian Helsinki Committee, "An evaluation of progress towards inclusive education of children with disabilities in Bulgaria: one year after the decision of the European Committee of Social Rights in the collective complaint *MDAC v. Bulgaria*", October 2009.

nor special schools – are based on teaching methods which comply with the aforementioned decision of the ECSR and its relevant case law.

VII. Conclusions and recommendations

General

120. The existence of minority groups should be considered as a major source of enrichment for any society. The effective protection by states of minority groups is a necessary condition for the establishment and preservation of social cohesion. The Commissioner thus encourages the Bulgarian authorities to fully adhere to and give effect to the Council of Europe standards of protection against discrimination, racism and xenophobia. He recommends ratification of Protocol N° 12 to the European Convention on Human Rights, of the European Charter for Regional or Minority Languages and of the Additional Protocol to the Convention of Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Protection against discrimination, racism and intolerance towards minorities

121. The Commissioner recommends that the authorities exempt the Commission for Protection against Discrimination from budgetary cuts and ensure its proper functioning by allocating adequate resources as well as continuing the information campaigns on anti-discrimination laws and the work of the said Commission.

122. The Commissioner refers to the Council of Europe standards regarding minority protection and recommends that the NCCEDI be structured in such a way as to ensure that all minority groups are represented and that NGOs participate on a clearly defined basis in line with good administrative practice.⁵⁴

123. The Commissioner recommends that an explicit provision be included into the domestic criminal code that makes racist motivation an aggravated circumstance for all offences. He further recommends that the Bulgarian authorities scrutinise domestic laws with a view to ensuring that excessive use of force by the police is prevented through clear legal provisions in line with the case law of the European Court of Human Rights. The implementation of these laws should be accompanied by systematic training of officers and by the adoption of measures to increase the number of members of minority groups working in law enforcement and in the judiciary.

124. In this context, the Commissioner recommends that a framework for effective investigations into alleged police misconduct be created, possibly by establishing an independent body, as is the case in some other European countries.⁵⁵

125. Noting the importance of reliable data to evaluate the effectiveness of projects and programmes in this field, the Commissioner recommends that the authorities consider the implementation of a comprehensive data-collection system, possibly by introducing a pilot project.

126. Noting with concern a growing Islamophobia, the Commissioner recommends an enhanced dialogue between the Bulgarian authorities and the Muslim community at large, including the Pomaks, with a view to promoting tolerance and mutual understanding.

⁵⁴ See Advisory Committee of FCNM, "Commentary on Participation", 05/05/2008.

⁵⁵ See the example of the Irish Police Ombudsman Commission described in the Commissioner's report on his visit to Ireland, 26-30/11/2007, para 25. See also the Commissioner's Opinion concerning independent and effective determination of complaints against the police, CommDH(2009)4, 12/03/2009.

127. As regards the victims of the “Revival Process”, the Commissioner invites the authorities to provide reparation to all victims concerned regardless of their ethnic origin, in the form of compensation and/or satisfaction, in accordance with the established principles of international law. As regards the pending pension claims of persons forced to leave Bulgaria, the Commissioner calls for a speedy, non-bureaucratic solution in view of the age of the people concerned.

Minorities’ freedom of religion, association and assembly

128. The Commissioner recommends that provisions regarding the registration of religious denominations be simple to avoid unnecessary restrictions of freedom of religion. Furthermore, any ambiguity in the current Denominations Act should be erased and local authorities as well as law enforcement officers should be properly instructed with the help of the case law of the European Court of Human Rights to avoid unnecessary interference with the freedom of religion. The Council for Dialogue Among Religions may serve as a forum for developing further concrete proposals.

129. The authorities are called on to thoroughly investigate all attacks on religious sites and bring identified perpetrators to justice.

130. As regards the cases relating to properties which were nationalised under the communist regime, the Commissioner calls upon the Bulgarian authorities to resolve outstanding property claims relating specifically to the Muslim community by establishing fast, efficient, domestic remedies to accommodate such claims and restore well-founded rights. In this regard, he strongly recommends an enhanced dialogue with the Muslim community to find alternative solutions to quickly settle property claims, including the most recent issue of the planned transformation of the Hamzabey Mosque.

131. The Commissioner recommends a, open, systematic dialogue with all minority groups in Bulgaria as well as amending the Bulgarian Constitution in a way that the right to freedom of association and assembly is effectively safeguarded, fully in line with the standards of the European Convention on Human Rights and the case law of the European Court.

Enjoyment by minorities of social rights

132. The Commissioner encourages the authorities to continue their efforts to integrate children from minorities. He recommends that data be collected and a systematic evaluation of the respective educational programmes be carried out with a view to creating an educational system that better combats segregation and improves job prospects for minority group members.

133. While appreciating the numerous measures adopted to improve access of minority groups to the labour market, the Commissioner recommends their systematic evaluation with a view to increasing their effectiveness towards better integrating all minority groups concerned into the labour market.

134. The Commissioner encourages the authorities to strengthen their efforts to implement their National Health Strategy with a view to improving access to information and health services by members of socio-economically disadvantaged minority groups, in particular Roma, Turks and Pomaks and to ensure effective co-operation between the different authorities involved.

135. He calls upon the authorities to safeguard the constitutional right to social assistance for Bulgarian citizens including particularly vulnerable groups in light of the relevant decision of the European Committee of Social Rights of February 2009.

Issues concerning human rights of Roma

136. The Commissioner calls on the authorities to implement speedily all plans adopted in the framework of the Decade for Roma Inclusion. He calls for these plans to be implemented through targets and indicators for implementing policies that address legal and/or social discrimination against Roma, in accordance with the Council of Europe Committee of Ministers Recommendation CM/Rec(2008)5 *on policies for Roma and/or Travellers in Europe*.
137. The Commissioner urges the authorities to conduct effective investigations into alleged violence by police and non-state actors against Roma. Administrative and penal sanctions must be taken against any police misconduct. Regarding violence by non-state actors, the groups of extremists responsible must be prosecuted. Preventive measures should also be taken. More generally, the Commissioner considers that hate speech against minorities, including Roma, must be countered with preventive and prosecutorial actions. He calls upon leading politicians to set an example by demonstrating tolerance and mutual respect.
138. Noting the unsuitable housing situation of many Roma people, the Commissioner recommends that the Bulgarian authorities ensure that adequate alternative accommodation is in place before any evictions take place. In this context, the 2006 decision of the European Committee of Social Rights must be fully respected and its recommendations implemented. The Commissioner considers unacceptable the situation witnessed during his visits, where Roma families live in squalor without access to water, sewage or electricity.
139. Recalling his 2009 Recommendation *on the implementation of the right to housing*, the Commissioner points out that procedures legalising constructions and registration of ownership should not impose conditions that could not be satisfied by long-term tenants. Vulnerable groups, including Roma, should be made aware of the evolution of property rights. The Commissioner calls on the authorities to ensure that cadastral and zoning mapping in certain municipalities will not be used as a way to deprive Roma families of their dwellings.
140. The Commissioner recalls the 2009 decision of the European Committee of Social Rights concerning access to social welfare and health care of disadvantaged persons, including Roma⁵⁶ and invites the authorities to give full effect to this decision. Particular attention should be focused on the Roma population which often lives in harsh conditions.
141. The Commissioner welcomes the measures taken to improve access of Roma to the labour market and recommends that the authorities pursue such measures further. Improvements in literacy among Roma adults as well as the development of specific training could help to reduce the high level of unemployment among Roma. In the context of the current economic crisis, there is a high risk of Roma being further marginalised. Protection against discrimination is therefore key. The Commissioner invites the authorities to guarantee that the Commission for Protection against Discrimination continues its important activities with a view to restoring the rights of victims of discrimination.
142. The Commissioner invites the authorities to make further efforts to decrease drop-out among Roma children. Specific data should therefore be collected. Root causes of drop-out must be better identified and measures taken to address them. Further budgetary efforts should be made to ensure that every child, including Roma, has access to a good standard of education.
143. The Commissioner recommends that the authorities undertake a thorough analysis of the consequences of the recent school reform and its impact on children's access to education, including Roma. The reported increases in children dropping out of school indicate that the reform

⁵⁶ *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 48/2008, decision on the merits, 18/02/2009.

is not effective. In this context, the Commissioner highlights the importance of consulting teachers, NGOs and parents.

144. The Commissioner calls for urgent measures to be taken regarding the placement of Roma children in institutions. Appropriate and targeted awareness-raising campaigns should be immediately initiated to inform parents of alternative solutions as well as the possible short-term and long-term consequences of such an institutionalisation. The Commissioner urges the authorities to adopt a concrete and comprehensive action plan to deinstitutionalise these children.

Protection of the rights of the child - children in institutions

145. The Commissioner calls on the authorities to reflect further upon the role and possible enhancement of the work of the State Agency for Child Protection, in order to remedy shortcomings identified in the present report.
146. The Commissioner invites the Bulgarian authorities to reform the juvenile justice system and bring it into line with international and European standards. The Commissioner's Issue Paper on juvenile justice may also be a source of inspiration.⁵⁷ Prevention of juvenile offending, diversion or restorative justice are elements to be considered in this process. The Commissioner further highlights that detention of children can only be used as a measure of last resort and for the shortest period of time.
147. The Commissioner remains deeply concerned about the persistence of large and unsuitable institutions for children in which their rights are not respected. The Commissioner invites the authorities to ensure that every child in out-of-home care lives in suitable and humane conditions. Existing institutions must receive sufficient funding from public authorities in order to ensure satisfactory services. In addition to basic needs, particular attention should be focused on granting access to medical treatment. Authorities are further invited to develop the means to maintain family ties between the child and his or her relatives.
148. The Commissioner stresses the importance of establishing an individual care plan for each child institutionalised which should be regularly reviewed. The decision to place a child in an institution which is ordered by the courts should also be reviewed on a regular basis. During this procedure, the views of the child should be heard and his or her best interests should be of primary concern in accordance with the UN Convention on the Rights of the Child. The Commissioner also calls for regular monitoring of all the out-of-home care and institutions.
149. Bearing in mind the numerous administrations responsible for the protection of children in institutions, the Commissioner calls for co-operation to be strengthened between these bodies. The possible transfer of responsibility should be considered, with regard, for example, to the institution housing children from birth to 3 years of age in order to harmonise practices and care. The Commissioner considers that a national mechanism able to offer support and guidance to local authorities and to allow for the exchange of good practices should be established. Sufficient funding should also be allocated to the municipalities to ensure that children are treated equally throughout the country.
150. The Commissioner recommends that particular attention be placed on children's rights, including their right to complain to an independent body as well as to participate in the organisation of their institution. The Commissioner invites the authorities to ensure that social workers and other staff receive appropriate, initial and ongoing training as well as necessary budgets to fulfil their duties. The dissemination of national policies should be ensured and their full implementation secured.

⁵⁷ Commissioner's Issue Paper, "Children and juvenile justice: proposals for improvements", CommDH/IssuePaper(2009)1, 19/06/2009.

The deinstitutionalisation process

151. The Commissioner strongly believes that institutions are not fit for children. He therefore commends the Bulgarian authorities' efforts to pursue the deinstitutionalisation process and offer alternative accommodation and treatment to children with disabilities or without parental care.
152. The Commissioner recalls that the UN Guidelines for alternative care of children⁵⁸ and the Council of Europe Recommendation on the rights of children living in residential institutions⁵⁹ should serve as reference standards in the deinstitutionalisation process as well as in the development of alternative care.
153. The Commissioner encourages the authorities to adopt comprehensive deinstitutionalisation programmes that should encompass both a short-term and a long-term strategy. The reform is to be implemented consistently throughout the country. In addition to preparing a budget, the action plan must include a road map with short-term and long-term objectives as well as a definition of the roles of the different national, regional and local authorities. The Commissioner encourages the authorities to involve all stakeholders in the process, including local authorities, civil society, parents and relatives as well as the children themselves.
154. The implementation of the deinstitutionalisation process can only be successful if alternatives, such as foster care or day care, are offered to families and children. The Commissioner invites the authorities to develop further measures to prevent the placement of children as well as to place the issue of the child's reintegration as the priority of the overall process.
155. The Commissioner considers that children in need of care should be placed in smaller, family-type establishments or with foster families. The best interest of children in institutions must be assessed on an individual basis and the right approach adopted so that they can be gradually moved from large, anonymous structures to family-type centres. Children in out-of-home care should receive a good standard of education to prepare them for living independently in the future. Furthermore, the placement of a child in out-of-home care should be reviewed periodically and the functioning of institutions adequately monitored. The participation of children themselves in the decision-making process regarding their placement is particularly important.
156. The Commissioner calls on the authorities to pay particular attention to children currently living in institutions in order not to create a "lost generation". Appropriate measures for children who have just turned or will shortly be turning 18 years of age should be one of the key priorities.

The right to education of children with disabilities

157. The Commissioner calls for the full and swift implementation of the 2008 decision of the European Committee of Social Rights regarding education of children with disabilities in institutions. He invites the authorities to adopt all measures necessary for ensuring that children with physical and intellectual disabilities are educated in the mainstream education system as far as possible.
158. The Commissioner invites the authorities to adopt a timetable for eliminating both segregation in schools and practices which deny children schooling. The plan should include measures to train teachers and non-pedagogical staff, to collect data and statistics and to raise awareness among all stakeholders of the plight of children in need.

⁵⁸ Adopted by the Human Rights Council on 15/06/2009, A/HRC/11/L.13.

⁵⁹ Recommendation Rec(2005)5 of the Committee of Ministers on the rights of children living in residential institutions, 16/03/2005.

APPENDIX

COMMENTS OF THE BULGARIAN AUTHORITIES

on the Report of Mr. Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Bulgaria from 3 to 5 November 2009

The Bulgarian authorities have carefully considered the report of Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bulgaria (3-5 November 2009). During his visit, the Commissioner received full co-operation from the Bulgarian authorities and was provided with detailed information on all the issues that he raised.

The Report, in general, acknowledges, the measures taken by the Bulgarian Government in the areas of concern (children's rights, particularly the rights of children in institutions, and the rights of persons belonging to minority groups). Consequently, it can only be regretted that the oral and written information, provided to the Commissioner for Human Rights by the competent Bulgarian authorities, has not been sufficiently reflected in his Report. Therefore, in accordance with the established procedure and in the spirit of constructive co-operation, the Bulgarian authorities would like to make the following observations:

Unfortunately, the Report contains some general allegations without, in most instances, specifying their sources and without providing concrete facts – e.g., the alleged 110 cases of attacks on Muslim houses or places of worship in the past 20 years (*paragraphs 25 and 129*).

The Report also refers to conclusions of other monitoring bodies, such as ECRI (*paragraphs 16 and 21*), to which the Bulgarian authorities have already provided replies. Unfortunately, these replies were not taken into consideration by the Commissioner. E.g. criticism is levelled at the existing Religious Denominations Act (*paragraph 3* of the Executive Summary and *paragraph 128* of the Report), to which the Bulgarian authorities have already responded on numerous occasions.

Likewise, broad generalisations are made on the basis of isolated cases, e.g. allegedly growing intolerance and a tendency of Islamophobia in Bulgarian society (*paragraphs 2 and 3* of the Executive Summary and *paragraphs 5, 23, 24, 126 and 129* in conjunction with *paragraphs 38, 39, 41, 42 and 45* of the Report).

The Report also calls for the “full” execution of judgments of the European Court of Human Rights and decisions of the Committee of Experts under the European Social Charter, which Bulgaria is under obligation to execute without such additional appeals.

With respect to the above allegations, it should be recalled that no State is immune to manifestations of intolerance. The Constitution and the relevant legislation of Bulgaria explicitly prohibit discrimination, including on grounds of religion or belief. The State promotes and encourages tolerance and respect among adherents to different faiths, as well as between believers and non-believers. In the few – regrettable - incidents when houses of worship had been vandalised, the Directorate of Religious Affairs with the Council of Ministers reacted without delay and alerted the law enforcement authorities. Thus, in 2009, when the mosques in Nikopol and Blagoevgrad were set on fire (*paragraph 25*), financial resources were immediately allocated for their restoration.

With regard to restitution, the relevant legislation - the 2002 Religious Denominations Act - provides for restoration of ownership *ex lege* and extends the time limit for such claims until **2013** (§ 5 of the Transitional and Final Provisions of the Religious Denominations Act). Consequently, the law does not need to be amended.

The Report further recommends that the Constitution be amended “in line with the standards of the European Convention on Human Rights and the case law of the European Court” for the purpose of safeguarding the minorities’ right to freedom of association (*paragraphs 48 and 131*). However, no convincing arguments in support of such legislative revisions have been provided. In this respect the following should be emphasised:

Regarding paragraph 3 of the Executive Summary and paragraph 128 of the Report:

The Religious Denominations Act (*State Gazette* No. 120 of 2002) regulates the right of religion as an absolute, personal and inalienable human right. Its exercise is not limited to freedom of association: setting up a religious community, participating in a religious community or organising institutions of the community. Legal personality is acquired in registration proceedings only on the basis of documents, and is simplified as much as possible. This proceeding can by no means be considered as impeding or restricting freedom of association. The Sofia City Court strictly observes the procedure for registration of religious denominations and effects the entries in due time. 75 (seventy-five) new religious denominations were registered between 2003 and 2009. The Religious Denominations Act does not impose on religious denominations the obligation to register their local divisions: their own statutes determine whether they should do so or not. Depending on the provisions of the statutes, if their respective leaderships decide, they can register their local divisions as legal persons with the competent district court or with the municipality mayors, according to a notification scheme (Article 19 and Article 20 of the Religious Denominations Act).

In the context of the above, it should be reiterated that the Religious Denominations Act is consistent with the international human rights standards. The Act is applied in compliance with the relevant international legal obligations of the Republic of Bulgaria, including the obligations arising from the European Convention on Human Rights and the International Covenant on Civil and Political Rights, and is in conformity with Resolution 1390 (2004) of the Parliamentary Assembly of the Council of Europe (PACE).

Regarding paragraph 38:

Being aware of the possible difficulties which denominations may encounter when they have to prove succession upon restitution of properties, the legislator has established a special simplified procedure in § 4 of the Transitional and Final Provisions of the Religious Denominations Act. The Directorate of Religious Affairs has already issued certificates of succession, provided for in the above provision, to all denominations which have requested them, including the Muslim denomination, but the latter has not taken the requisite action. It should be also noted that compared to other religious denominations Muslims have the largest number of places of worship per capita: over 1,200. As to the payment of 4% of the property value, this is a requirement of all natural and legal persons and not just of denominations at large and the Muslim denomination in particular.

The mosque in Stara Zagora, which was built over the ruins of an older Christian church, constitutes public state property and enjoys the status of a national cultural landmark. There is a multiannual programme for exploration of the archaeological heritage beneath the mosque. Its accurate archaeological study establishes the presence of various religions and their coexistence in the Bulgarian lands.

Regarding paragraph 39:

The construction of an Islamic Centre and a second mosque in Sofia, just as many other construction projects, has been suspended due to the forthcoming review of the status of “Studentski Grad” and not because of any refusal. Neither has the permission for the construction of a mosque in Burgas been revoked. The order in question concerns only the removal of the minaret (of which 2 metres in total had been built) because its construction was started without a design and the proper building permit. The construction of meeting halls in Veliko Tarnovo and Varna has neither been banned nor refused; the relevant procedure is under way.

Regarding paragraph 41:

With respect to the letter of the Deputy Mayor of Burgas to the school principals, which contained abusive qualifications of certain religious denominations, the Directorate of Religious Affairs had immediately sent a letter to the Burgas District Prosecutor’s Office requesting the institution of criminal proceedings.

Regarding paragraph 42:

The only requirement with regard to preaching from house to house is that it should be organised in such a way as not to disturb citizens at their own homes and not to breach municipal regulations concerning public order.

Regarding paragraph 45:

Article 7 of the Religious Denominations Act incorporates the provisions of the European Convention on Human Rights and the Constitution of the Republic of Bulgaria.

The Bulgarian authorities agree with the general conclusion derived from the case law of the European Convention of Human Rights that the law should be both adequately accessible and predictable so as to enable the individual – if need be with appropriate

advice – to regulate his conduct. However, it should be noted that the Judgment of the European Court in the Case of *Hasan and Chaush v. Bulgaria*, which the Commissioner invokes in his Report when commenting on an alleged “ambiguity” in the Religious Denominations Act, dates back to 2000, whereas Article 7 of the **new** Religious Denominations Act (in force since 2002) contains clear and predictable limitations to the right of religion, its protection, as well as the legal status of the religious communities and institutions and their relations with the State, in conformity with the standards of the Convention.

Regarding paragraphs 48, 52 and 131:

The Constitutional Court of the Republic of Bulgaria has clearly defined the scope of Article 11 (4) of the Constitution. The Court stated that Article 11 (4) prohibits the existence of political parties the membership of which is expressly limited by the provisions of their statutes to persons belonging to a particular racial, ethnic or religious group, regardless of whether it is in a minority or in a majority. Consequently, this constitutional provision may not be used to prevent any particular linguistic, ethnic or religious minority groups from “organising themselves *a priori*.” On the contrary, there exist political parties whose membership consists overwhelmingly of members of a particular ethnic group, as well as associations formed by persons who are all members of a particular ethnic group. One of these parties was part of the country’s two previous coalition governments.

The principle of freedom of association is guaranteed by the Constitution and the related legislation to each person without any discrimination whatsoever in full conformity with Bulgaria’s international obligations. In this regard, it should be reiterated that a possible registration of a particular political party depends entirely on the initiative of the interested persons, in accordance with existing Bulgarian legislation.

Regarding paragraph 2 of the Executive Summary and paragraph 123 of the Report:

With reference to the allegation that there is a “worrying trend” towards racially motivated offences, it should be stated that the analyses and surveys conducted by the competent authorities, including the Prosecutor’s Office, have not identified such a trend. It is therefore unclear on what basis this conclusion has been drawn since the sources of such allegations have not been specified.

In this connection, it should be recalled that the Criminal Code of the Republic of Bulgaria expressly criminalises offences against national and ethnic equality (Chapter III “Offences against Citizens’ Rights”, Section I “Offences against National and Racial Equality”, Section II “Offences against Religious Denominations”, and Section III “Offences against Citizens’ Political Rights.”) The principal characteristics of these offences, which are regulated in Article 162 and Article 163 of the Criminal Code, are the perpetrators’ racist or nationalist motives. The penal sanctions provided for offences against national and racial equality demonstrate that the legislator treats these offences as presenting a high degree of social danger.

Even though the Criminal Code does not contain a provision which expressly qualifies racist motivation as an aggravating circumstance upon the commission of all types of offences, the provisions of the General Part of the Criminal Code expressly state that in determining the penal sanction, the court takes into consideration, *inter alia*, the motives for the commission of the act (Article 54, para1 of the Criminal Code), including possible racist motives. Besides, in case of the so-called “ideal cumulation”, an offence against national and racial equality may have been perpetrated simultaneously with another offence provided for in the Special Part of the Criminal Court. The principles of determination of the penal sanction are also essential, with the court taking into account, along with the mitigating and aggravating circumstances, also the motives for the commission of the offence. If it is established that the motivation for the commission of a particular offence was racist, this in all cases is considered as an aggravating circumstance.

Regarding paragraphs 9, 121 and 141:

Within the resources available, the authorities are providing everything necessary to ensure the effective functioning of the Commission for Protection against Discrimination, as well as for informing the public, including persons belonging to minority groups, of the contents and scope of the Act on the Protection against Discrimination.

Regarding paragraphs 18, 19, 29 and 124:

It shall be reiterated that in all cases involving supposed violations of the law by police officers, inquiries are conducted and where such violations are proved, their perpetrators and, where necessary, their immediate superiors, too, are sanctioned. There are numerous cases of police officers having been dismissed from the police after they had been proven guilty of such violations. Moreover, when the facts of the inquiry indicate that a crime had possibly been committed, the full set of collected materials is submitted to the prosecutor’s office for further action. This is a mandatory procedure which is followed without exception, regardless of the ethnic background of the victims of the alleged violations.

With reference to the allegations of excessive use of force by the police, it should be noted that the Prosecutor’s Office analysed in detail the judgments of the European Court of Human Rights in cases against Bulgaria. The Prosecutor’s Office has taken measures, within its competences, for the elimination of the violations, such as shortening the time limits for examination of cases in the pre-trial phase, strengthening the administrative capacity of the Prosecutor’s Office to counter cases constituting police brutality, reporting by the administrative heads of the cases of detained persons, outlining measures for their prompt and expeditious completion, training magistrates in the European Convention on Human Rights etc. Special emphasis is given to strengthening the capacity of the Prosecution Office in exercising supervision over the activities of the police authorities in order to prevent excessive use of force by the police, as well as the enhanced supervision of cases concerning police brutality.

In addition, the Ministry of Interior has taken the necessary practical measures for the eradication of the root causes of alleged violations of the law by police officers and for the prevention of such violations in the future. Thus, a special system for registration of

complaints alleging ill-treatment by police officers has been introduced, and is closely monitored.

The use of firearms by police officers is strictly regulated in Bulgaria. The Ministry of Interior Act expressly and exhaustively regulates the hypothetical cases in which physical force and auxiliary means may be lawfully used (Articles 72 and 73), as well as the lawful use of firearms as a last resort (Article 74). Firearms are used exceptionally, as a last resort. However, the incidence of use of firearms in such circumstances is irrespective of the ethnic background of the persons against whom firearms may be used. In connection with paragraph 29, it should be emphasized that in a criminal investigation, the State and the Prosecutor's Office are under obligation by law to investigate all cases of religious and ethnic violence, respectively, fundamentalist behaviour, and in the process of investigation for establishment of the objective truth, the persons affected have been provided with all legal safeguards for protection of their rights and legitimate interests. In such isolated cases, the steps taken by the Prosecutor's Office have not led to the undermining of public confidence and have not given rise to doubts about the impartiality of the Prosecutor's Office.

Regarding paragraph 20:

For the purpose of popularizing access to legal aid among a broader range of persons - socially disadvantaged persons, persons belonging to ethnic minorities and others, the National Legal Aid Office (NLAO) has published a brochure with information on the status and functions of the Office, the criteria, the procedure and terms for provision of free legal aid, as well as the types of cases on which legal aid is provided. The brochure has been circulated to the Social Assistance Directorates with the Agency for Social Assistance in order to familiarise the staff of these structures with the activity of the NLAO and their obligations under the Legal Aid Act, as well as to inform the socially disadvantaged persons about the possibilities for access to legal aid. The NLAO is also popularising access to legal aid through publication of information items in the mass media and by providing oral consultations on site at the Office.

Regarding paragraph 24:

In Bulgaria, the law expressly requires from the public media (Bulgarian National Radio and Bulgarian National Television) to foster mutual understanding and tolerance in relations among people through their programme services and not to admit broadcasts inciting intolerance or hatred based on race, gender, religion or national origin. Media which breach these obligations are liable to sanctions according to the law.

With regard to the activities of the Council for Electronic Media (CEM) aimed at combating instances of "racism" in the electronic media it will be noted that in the period since its establishment and until the end of 2008 CEM issued 7 decisions imposing sanctions on electronic media outlets in cases involving ethnic intolerance and another 3 – in cases involving religious intolerance. Likewise, in 2009 CEM issued one decision imposing sanctions on an electronic media outlet in a case involving religious intolerance.

Regarding paragraph 27:

It will be recalled that the Bulgarian authorities are implementing a consistent policy intended to eradicate and prevent any stereotypes and prejudice against members of any ethnic, religious or linguistic minority. As we have repeatedly mentioned, manifestations of anti-Semitism are practically non-existent in Bulgaria. Whenever isolated incidents occur, the competent authorities immediately take adequate measures. At the same time, priority is given to preventing and combating anti-Semitism.

Regarding paragraph 2 of the Executive Summary and paragraph 127 of the Report:

With regard to the issue of pension rights of the victims of the “Revival Process”, it should be emphasised that the issue has been resolved. According to the Act on the Political and Civil Rehabilitation of Repressed Persons, adopted in 1991, the victims of repression under circumstances related to their origin, political convictions or religious beliefs or the heirs of such persons, including the heirs of persons who lost their lives in connection with the forced change of names, are paid lump-sum compensation for pecuniary and/or non-pecuniary damages, and they also receive a monthly supplement to their pension or to the sum total of the pensions received. Separately, the heirs of persons who were killed, who committed suicide or who disappeared in connection with the above events (in the period 1985-89) receive an inheritance pension until it is terminated on legal grounds.

Regarding paragraph 35:

Concerning the settlement of the pension rights of persons who have acquired entitlement to pension, it should be emphasized that an Agreement on Payment of Bulgarian Pensions in the Republic of Turkey has been in force for more than ten years (in force since 1 March 1999). According to the provisions of this Agreement, the Bulgarian side guarantees and implements the enjoyment of the rights to a pension for contributory service acquired in Bulgaria of persons who have immigrated to Turkey after 1 May 1989. By virtue of this Agreement, at present Bulgaria pays pensions to some 22,000 persons in Turkey. For 2009 alone, Bulgaria paid to Turkey an amount approximating **BGN 50 million. The total sum paid so far amounts to an impressive EUR 200 million**, and new entitlement holders step forward each year.

Regarding paragraphs 32 and 33:

With reference to the call for the conduct of a proper investigation into the events of 1985-89, it should be emphasised that the Bulgarian authorities has repeatedly provided detailed answers to this question, on the basis of information received from the Prosecutor’s Office of the Republic of Bulgaria. We would like to recall in brief that the pre-trial proceeding in Case No. 1 on the Dockets of the Armed Forces Prosecutor’s Office for the Year 1991 was instituted on 31 January 1991. The investigation had been suspended and resumed for the purpose of questioning witnesses who have failed to appear. At this point of time, the criminal procedure has been stayed because all possible investigative steps within the competence of the Sofia Military District Prosecutor’s Office have been performed whereas a conclusion of the investigation and, respectively, of the pre-trial proceeding, requires the questioning, in a witness capacity, of the rest of the victims who have not appeared. In connection with the assertion on this issue stated in

the Report, a special analysis is being conducted at the Prosecutor's Office, and it has not yet been completed.

It will be further noted, that the victims can defend their rights and legitimate interests in court proceeding, invoking their rights under the Criminal Procedure Code, and constitute themselves as private accusers (Article 76 to Article 79 of the Criminal Procedure Code) and civil claimants (Article 84 to Article 88 of the Criminal Procedure Code). Another opportunity for protection of the rights and legitimate interests of the victims has been provided by the Act on Political and Civil Rehabilitation of Repressed Persons and, as evident from the case records, most of the witnesses have availed themselves of this opportunity.

Regarding paragraph 51:

Concerning the case of UMO Ilinden-PIRIN, it will be recalled that the Committee of Ministers of the Council of Europe adopted in December 2009 a Final Resolution on this case, which unequivocally states that Bulgaria did abide by the ECtHR judgment in question. Consequently, any claim to the contrary of the applicant would be manifestly unfounded and irrelevant.

Regarding paragraph 5 of the Executive Summary and paragraphs 64, 66, 68, 69 and 70 of the Report:

The section entitled "Issues concerning the human rights of Roma" contains a number of conclusions and assessments which are not substantiated by solid facts and cannot be accepted.

The assertion that "[y]et Roma remained predominantly socially excluded, marginalised and segregated and still live in poverty with little access to health care and education" conflicts with the rest of the presentation in that section, which covers the measures implemented by the Bulgarian Government aimed at improving the situation of the Roma and their full integration in society.

Likewise, the issue of the housing conditions of part of the Roma population, and especially their eviction from ramshackle unlawful structures, is being raised again without providing or clarifying all relevant facts.

During his visit the Commissioner received detailed information on the Bulgarian Government's systematic and purposeful efforts within the framework of the national programmes and action plans adopted in the sphere of education, health care, physical infrastructure, housing conditions, labour and social policy, maintenance of public order and protection against discrimination in the interest of the Roma population.

It must be emphasised that a policy of social exclusion, marginalisation and "segregation" of the Roma does not exist in Bulgaria. There is no "segregation" in the sphere of health care.

The Constitution and the related legislation prohibit discrimination on any grounds whatsoever. Furthermore, any cases of discrimination against Bulgarian citizens of Roma origin are promptly investigated by the competent bodies: the Commission for Protection against Discrimination, the National Ombudsman and the judiciary.

Regarding supposed incidents of “racially motivated violence against Roma”, the Prosecutor’s Office, in performance of its supervisory activities, has not established a clear tendency in this regard. Any such incidents are isolated cases in society. Furthermore, the Prosecutor’s Office always conducts effective investigations, including in any cases of violence against Roma, in accordance with the law, which requires an objective, comprehensive and full investigation, taking into consideration cumulatively the social danger of the perpetrators and of the act itself, including motives, causes and *modus operandi*.

In the socio-economic sphere, the Bulgarian Government has for many years been consistently implementing specific measures for the effective overcoming of the socio-economic problems of the Roma community, including ensuring equal access to education, employment and health care, improvement of the housing conditions etc.

The Bulgarian authorities are perfectly well aware of the fact that there is a direct link between the unemployment rate among the Roma community and certain educational problems of the Roma population. As repeatedly noted on other occasions, the problems facing numerous members of the Roma communities in Central and Eastern Europe, including in Bulgaria, are mostly of a socio-economic nature. The authorities realise the magnitude of these problems and have identified their causes. On the basis of a thoroughgoing analysis of the various aspects of the situation of the Roma community in Bulgaria, after the transition to a market economy, the Bulgarian authorities have elaborated and are implementing a number of measures to address comprehensively the problems of the Roma community, which also include employment and education. Several years ago, a special policy was initiated for the prevention of the unnecessary placement of children of Roma origin at establishments for children with disabilities, and this policy continues to be implemented to date.

The Roma integration policy in Bulgaria is based on the *Framework Programme for Equal Integration of Roma in Bulgarian Society*, adopted back in 1999, and on a number of other strategies and programmes, some of which were adopted before 2005 when the International Initiative Decade of Roma Inclusion 2005-2015 was formally launched in Sofia on 2 February 2005.

The programmes for improvement of the situation of the Roma specifically target areas of the country (including large cities) where social and economic difficulties are particularly grave.

For the implementation of the programmes and strategies, financial resources are allocated from the national budget and substantial resources are committed under pre-accession instruments and operational programmes of the European Union. Other sources

of funding are used as well. As a result, a large number of projects have been implemented but they are predominantly outside Sofia Municipality. Within the territory of Sofia Municipality, social housing construction projects have been implemented too (in the Hristo Botev Quarter) and a comprehensive *Municipal Strategy on the Decade of Roma Inclusion in Sofia 2007-2013* has been adopted (by Sofia Municipal Council Resolution No. 884 of 28 September 2007). New social housing is being constructed, and the existing stock is made available to citizens of Roma origin in other cities as well (Haskovo, Veliko Tarnovo etc.) in accordance with the relevant municipal rules and regulations.

These efforts, notwithstanding, the housing problems are objectively difficult to solve because of the relatively high internal migration rate of citizens of Roma origin in Bulgaria. This often makes it impossible to provide them with social housing because each municipality requires a certain duration of permanent residence within the respective territory. Otherwise, the rights of other applicants may be violated.

Another substantial problem in the sphere of housing conditions is the removal of unlawful structures. Steps for the removal of such structures are taken after completion of all legal procedures, including court proceedings, which often take years and allow the interested parties to find an acceptable solution. Judging by practice, despite the regular warnings about the inadmissibility of unlawful construction and about a forthcoming removal of structures, the unlawful acts persist. A situation evolves in which the co-operation of law enforcement authorities has to be sought for the removal of unlawful structures, i.e. for observance of the law.

Regarding paragraph 71:

It should be recalled, that the Roma, who were relocated from the central part of the Borough of “Lyulin” in 2001 because of the construction of a hypermarket, previously occupied dwellings unlawfully built on municipal land. They were temporarily accommodated in mobile homes in the Republika Quarter. Subsequently, some of them moved in with relatives in other parts of the city. Some of the mobile homes were unlawfully ceded by their occupants to citizens of Roma origin coming from other parts of the country. Notably, a large part of the persons living in these mobile homes do not hold identity documents certifying their permanent address. All this makes it very difficult for the municipal authorities to keep record of the persons in need of housing and to map out measures for durable solution of problems in the quarter. At the same time, all current occupants of the static caravans, including newcomers from other parts of the country, insistently claim allocation of social housing in the capital. The utility problems of the occupants of the caravans in the Republika Quarter: water supplies, sewerage, household waste removal, are known to the municipal authorities who are making efforts to address them. Regrettably, the utility infrastructure built by the municipality is poorly maintained by the residents of the area, which is why the infrastructure is damaged or disrupted. It should be furthermore noted that, the Sofia Municipality has made arrangements for the bussing of Roma children from the quarter to their schools. The Municipality is exerting sustained efforts before the competent central government institutions for finding solutions to the housing problem of those persons of the Republika

Quarter in the Borough of Lyulin who are entitled to social housing according to the existing statutory requirements.

Regarding paragraph 72:

As an example of “forced eviction” of Roma, the Report refers to “the demolition of Roma houses in Burgas in September [2009], leaving 200 people, including children and elderly, homeless just before the winter” (the source of these allegations is not specified). Insofar as the Commissioner has not asked Bulgarian Government for clarifications on this case, the actual situation related to the unlawful construction of structures in the quarters of Gorno Ezerovo and Meden Rudnik of the City of Burgas and the action taken by the Municipal Administration in Burgas and the Regional Office of the National Construction Control Directorate for the restoration of legality.

Discharging its duties to exercise control over construction and pursuant to Resolution of 30 March 2004 of the Burgas Municipal Council, the Burgas Municipal Administration conducted a check in 2004, identifying 44 unlawful construction works and 10 light structures outside the regulation boundaries of the Quarter of Gorno Ezerovo, as well as 21 unlawful construction works and 21 light structures within the territory of the Quarter of Meden Rudnik, occupying municipally owned land tracts allotted for a street and a private-owned land tract. The building stock inventoried during the check consisted entirely of brick-nogged timber-framed and semi-solid structures, mostly built of makeshift and depreciated materials. The buildings lack water supply and sewerage and abstract electricity illegally by means of overhead cables. Because of these circumstances, the habitation is unhygienic and the surrounding areas are strongly polluted, creating prerequisites for the outbreak of epidemics and the spread of infections. Both spatial-development areas in question, developed with unlawful construction works, border on quarters inhabited by Roma population which have been in existence for over 50 years. It should be noted that the measures taken on the part of the Municipality were fully supported precisely by that population, as well as by the rest of the residents of the City of Burgas.

The execution of the coercive measures in respect of the unlawful structures and buildings was preceded by a sustained effort to clarify the action that had to be taken by the owners of these structures and buildings in the 2006-2009 period. In reality, the orders of the Burgas Regional Office of the National Construction Control Directorate were executed within two to five years after their issuance.

Meeting the requirements of the relevant administrative proceeding to notify the parties concerned in advance of all steps taken, the parties concerned were notified and given, according to the established legal procedure, the written statements of ascertainment, orders, memoranda, voluntary compliance invitations, notifications, letters and other documents. A large part of the parties affected, in execution of the orders of the Burgas Regional Office of the National Construction Control Directorate, removed by themselves the unlawful buildings they had used until then.

The occupants of the removed buildings have returned to the immovables and buildings in the Quarters of Gorno Ezerovo and Meden Rudnik of Burgas, which they had occupied continuously before moving to the unlawful structures in the same quarters. Only two or three of these occupants had come from elsewhere in the country. They left the City of Burgas and returned to the settlements of their previous residence. No persons have been left homeless after the coercive measures taken in respect of the unlawful structures and buildings they occupied.

It will be noted that on 8 December 2009, within the framework of the campaign for the removal of unlawful construction within the territory of the municipality, the Burgas Municipal Administration and the Burgas Regional Office of the National Construction Control Directorate started the demolition of 257 unlawful structures in the Fishing Village near Burgas, none of which was occupied by Roma.

Regarding paragraph 100:

In connection with the recommendation that an individual care plan be established for each institutionalised child, which should be reviewed at regular intervals, it should be emphasized that an individual care plan is developed for each child placed in a specialised institution in the country and this plan is reviewed every six months, i.e. this recommendation has already been implemented.

It will be noted that 1,348 children were accommodated at specialised institutions in the first half of 2009. During the same period, a family environment was provided for 2,625 children (as a result of prevention, reintegration, and placement with extended and immediate family, placement in foster care) who otherwise would have been institutionalised. Therefore, the number of children for whom a family environment has been provided is double the number of children placed in institutional care.

Since 2001, the number of children placed in specialised institutions has steadily decreased. Community based services intended to support families with children and children themselves are as follows: family type environment centres, day care centres for children with disabilities, centres for social support, crisis centres etc.

In October 2009, the Agency for Social Protection prepared a Deinstitutionalisation Plan in two parts: Part One covers the period until the end of 2010, and Part Two covers the period until the end of 2014. The Plan is based on the principles of case-by-case handling of the closure of each child care home, engagement of all stakeholders - institutions, public organisations, families - and planning suitable social services for prevention, integration and support. A deinstitutionalisation team has been formed for the implementation of the Plan, which holds meetings and co-ordinates measures with the local and regional authorities, the non-governmental organisations, the local and regional structures of the Agency for Social Assistance etc. At present, pilot work is in progress on the first stage of the Plan, which envisages the closure of nine child-care homes, reduction of the capacity in over 30 child care homes and provision of a broad spectrum of community based services for children and families.

Regarding § 106: It should be clarified that the specialised institutions for children from birth up to 3 years of age (both healthy and with disabilities) are under the jurisdiction of the Ministry of Health. Institutions for children without parental care, with intellectual and physical disabilities (from 4 to 18 years of age) are under the jurisdiction of the competent municipalities.