

Briefing paper *Neshkov and others v. Bulgaria, Kehayov group of cases*

1 March 2018

Conditions in detention facilities – prisons and prison hostels

There is improvement in the living conditions in prisons and in prison hostels due to

- renovations and building of new facilities – **but**

Sofia and *Pazardzhik* prisons main buildings are in very dilapidated condition and need renovations. In *Pazardzhik* the renovation started in 2018.

Some prison hostels (*Keramichna* – worst material conditions, *Hebros*, *Cherna gora* – bad conditions and cold indoors, *Kremikovzi* – bad conditions and cold indoors) are in serious need for renovation and there are no plans for renovations except for *Cherna gora*.

- flexibility in allocation of prisoners as one of the measures against overcrowding.
- decrease in the total number of prisoners – the average number of prisoners in 2017 was 7100, of which 210 women (according to General Directorate for the Execution of Punishments (hereinafter GDIN) data) – third year in a row decrease.
- Introduction of 4 sq. m. of living space per person.
- Improved Early Conditional Release System (Parole) - unlike the legislative reforms, that aimed to remedy overcrowding through better distribution of prisoners, the amendments in the early release system were developed to contribute to the actual reduction of prison population. Even though there is increase in jurisprudence and prisoners make use of this option, courts grant early conditional release only if there is a positive submission by the prison governor.

Conditions in Investigative detention facilities (IDFs) – remain problematic.

33 IDFs, of which 6 attached to prisons/ prison hostels.

Even though the capacity of IDFs is larger than the total number of detained persons, overcrowding was found at some point in *Russe*, *Svilengrad*, *Vidin* and *Haskovo* (GDIN data).

The IDFs are in far worse conditions in relation to prisons and prison hostels. The situation is as follows:

- 1 IDF (*Gabrovo*) is below ground level;
- Except for the IDFs located within the prison premises and few new IDFs, the cells of all others lack day light, because they have no outside windows;
- In most of the old IDFs there is no possibility for air circulation or ventilation;

- In 5 IDF's there is no outside space for walking or exercise and the detained persons do not go outside at all, and in other 10 IDF's the area for outside activity is actually a separate room but without windows;
- In 18 IDF's there are no toilets within the cells, there is a shared bathroom on the floor but to be used the detained persons have to ask for it usually by banging on the door of the cell.

Special regime prisoners

The 2017 Act claimed to be introducing substantive amendments in the legal framework governing the highly restrictive “special regime”, applied to life prisoners and, thus, to be implementing the landmark case *Harakchiev and Tohumov v. Bulgaria*. However, it failed to comply with one of the explicit recommendations of the ECtHR, namely, to discontinue the automatic application of the “special regime” to life prisoners, without prior individual risk assessment.

Legal remedy

The 2017 Act made an important amendment to Article 3 of the *Execution of Punishments and Pre-Trial Detention Act* (hereinafter EEPPTDA), by updating the definition of what might constitute torture, inhuman or degrading treatment of convicted and remand prisoners. One of the most progressive developments in the Bulgarian legislation, driven by *Neshkov*, was the establishment of dedicated preventive and compensatory remedies with regard to any form of treatment, that amounts to torture, cruel, inhuman or degrading treatment of convicted or remand prisoners. The new remedies are meant to complement each other but could be applied independently. They were introduced in the legislation two months after the deadline, set in *Neshkov*, where the enforcement of the preventive remedy was postponed for another three months – until 1 May 2017.

Even though there is significant increase in jurisprudence under the new mechanisms it is too early to estimate whether the remedies are effective and to what extent they have achieved the intended impact.

An important remark, however, is that female prisoners don't have at their disposal one of the remedies available under the EPPTDA – to be transferred to another detention facility due to ill treatment since there is only one female prison.

Regarding the compensatory measures, there is also increase in jurisprudence, however it is too early to provide estimates on its effectiveness. The preliminary results show that the compensations ruled by the courts are low and this often discourages lawyers to undertake cases under the EPPTDA.

It is important to note the Government has not asked for the enhanced supervision to be removed and we find that it should continue for this group of cases.