Krassimir Kanev

NATIONAL STANDARDS AND POLICIES ON RESOCIALISATION OF ROMA OFFENDERS IN THE CRIMINAL JUSTICE SYSTEM IN BULGARIA

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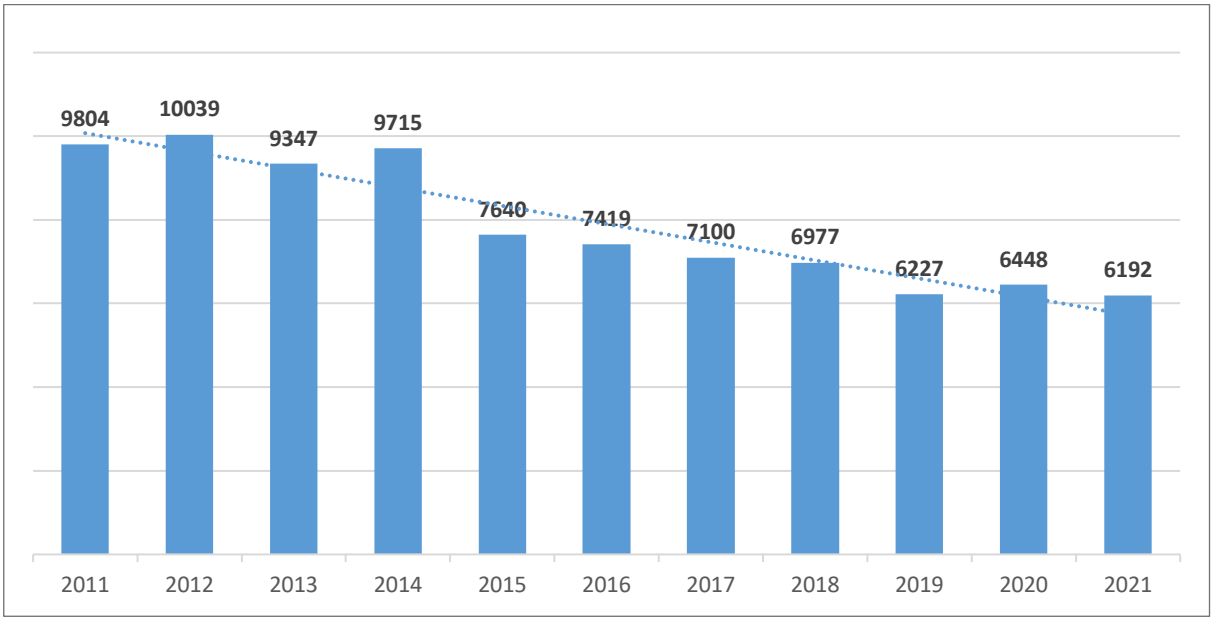
INTRODUCTION: GENERAL INFORMATION ABOUT THE DEMOGRAPHICS AND TREATMENT OF REMAND AND CONVICTED PRISONERS IN THE PENITENTIARY SYSTEM OF BULGARIA

The Bulgarian prison system (officially and not very accurately prisons are called "places for deprivation of liberty") is centralised. All Bulgarian prisons function under the authority of the Ministry of Justice, and in particular the Directorate General for the Execution of Punishments. There are 12 prisons in Bulgaria. Each prison has open and closed prison hostels functioning under its administration - a total of 26. Some of these prison hostels are as large as the prisons themselves. This number also includes the Sliven Prison, as well as the two prison hostels functioning under its jurisdiction - the only places where women serve prison sentences. In addition, juvenile boys serve their sentences at the Vratsa Prison Correctional Facility, and juvenile girls serve their sentences at the Sliven Prison Correctional Facility. Thus, the total number of institutions for serving the sentence of imprisonment (prisons plus prison hostels and correctional facilities) is 40. Seven regional “Execution of Punishments“ offices operate to supervise the execution of this and other sentences.

Over the last ten years, the number of prisoners in Bulgaria has decreased, as illustrated in *Chart 1* below.

Chart 1: Average number of prisoners in the prisons across Bulgaria, 2011-2021



Source: BHC, *Human Rights in Bulgaria in 2021*, March 2022, available at: https://bghelsinki.org/bg/.

The drop in the number of prisoners is the main factor that contributed to the decrease in overcrowding in prisons and prison hostels in Bulgaria. The opening of several new prison hostels in recent years also contributed to this. In 2020, the only remaining overcrowded prison in Bulgaria was the one in Plovdiv.[1]

[1] Directorate General for the Execution of Punishments. *Activity Report of DG Execution of Punishments in 2020*, Sofia, 2021, p. 6. Available at: https://prisonreform.bg/otchet-gdin-2020/ (in Bulgarian).

According to SPACE I – the annual penitentiary statistics of the Council of Europe – the largest share of prisoners in Bulgaria are serving sentences for theft.[2] However, this share has been dropping in recent years – while in 2007 54.5% of all prisoners had been convicted of theft,[3] in 2020 this share was 27%. The next largest share is of those convicted of transport offences – 16.9% of all prisoners.[4]

In 2020, the share of women prisoners in Bulgarian prisons was 3.2%, which is among the lowest in Europe, and that of juveniles – 0.4%, also among Europe's lowest.[5] It should be borne in mind, however, that a significant proportion of juvenile offenders have imposed measures under the Juvenile Delinquency Act, which constitutes imprisonment in reformatory boarding schools. The conditions in some of them are worse than those in which juveniles deprived of their liberty by criminal law are serving their sentences. In 2020, foreign prisoners had a relatively low share of 2.5%.[6]

The Bulgarian criminal justice system does not collect statistics on convicted individuals by ethnicity. In 2021, the BHC conducted a survey of 1,010 detainees whose pre-trial proceedings had begun after 1 July 2019. The survey is representative of newly-convicted prisoners. *Chart 2* below shows the shares of persons belonging to the main ethnic groups in Bulgaria, as well as of foreigners who have recently been convicted and are serving effective prison sentences.

With a 42-percent share of respondents, the Roma are extremely overrepresented among recently sentenced prisoners. For a number of reasons, the actual size of the Roma population in European countries is hard to estimate. The Council of Europe and the European Commission estimate that about 750,000, or 10.33% of the Bulgarian population, is of Roma origin.[7] If we take this estimate, the share of recently convicted Roma in Bulgarian prisons is about four times higher than their share among the general population. This estimate is based on expert calculations and it differs from census data where people self-identify and declare their ethnicity on a voluntary basis. Census figures for the Roma population are significantly lower, as part of Roma people self-identify with a different ethnicity (in Bulgaria - mainly as Bulgarian or Turkish). According to the most recent census data available – that of 2011, 4.9% of the Bulgarian population are Roma.[8] The census has adopted the principle of self-declaration of ethnicity, the same as the survey. On the basis of that figure, the share of recently convicted Roma prisoners is 8.6 times higher than their share in the general population.

Chart 2: Ethnicity of persons deprived of their liberty in the last two years

[2] Council of Europe (2021). *Annual Penal Statistics – SPACE I 2020*, available at: https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf., p. 51.

[3] *Ibid*., p. 58.

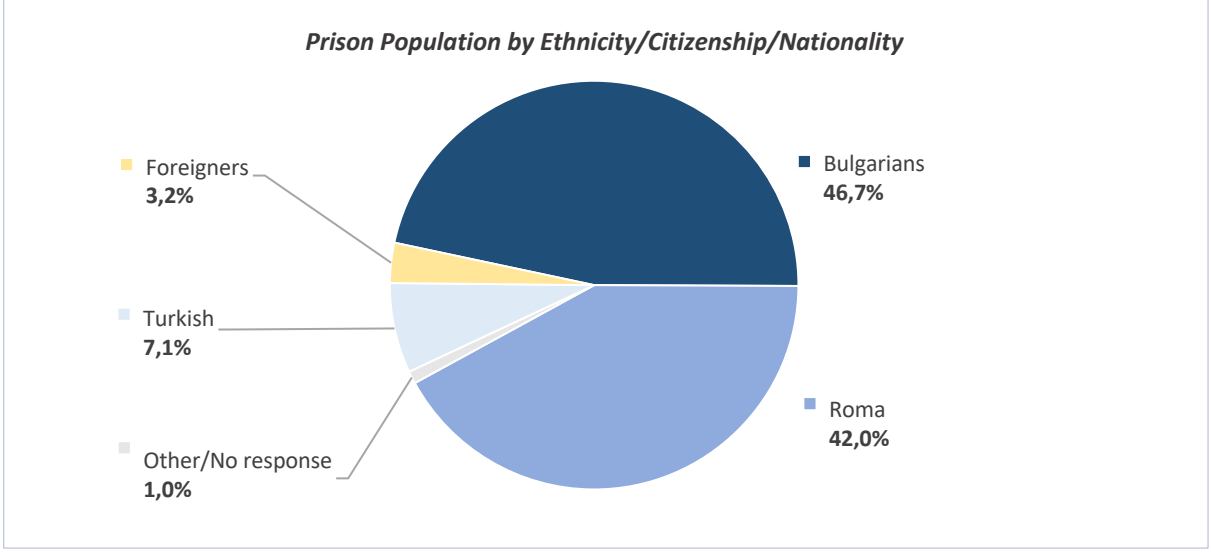
[4] *Ibid.*, p. 51.

[5] *Ibid*., p. 45.

[6] *Ibid*.

[7] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Framework for National Roma Integration Strategies up to 2020*, COM(2011) 173 final, Brussels, 5.4.2011, p. 15.

[8] NSI, *2011 Census: final report*, p. 25, available at: https://www.nsi.bg/sites/default/files/files/pressreleases/Census2011final.pdf (in Bulgarian).



The survey reveals significant differences in the treatment of Roma compared to other ethnic groups in police detention and during pre-trial proceedings. *Table 1* below presents the differences in the use of force during arrest and inside the police station between the respondents belonging to the main ethnic groups in Bulgaria.

Table 1: Differences in use of physical force during arrest and inside the police station
(% positive responses)

Was physical force used against you during arrest?			Was physical force used against you inside the police station?		
Bulgarians	**Turks**	**Roma**	**Bulgarians**	**Turks**	**Roma**
18.4%	16.7%	28.8%	14.2%	19.4%	30.19%

This data is a clear indication of discriminatory treatment of Roma in a key area of the criminal justice system in Bulgaria. The different treatment is particularly drastic on the use of force inside the police station. The number of Roma who report ill-treatment during their detention at the police station is more than twice higher than that of Bulgarians.

The survey reveals higher proportions of Roma who reported that they did not have a lawyer throughout the entire duration of the pre-trial proceedings (33.5% against 22.5% for Bulgarians); that they had an *ex officio* lawyer (66.3% against 43.9% of Bulgarians); that they were never able to meet with their lawyer in private (21% against 15.7% of Bulgarians). Roma also reported worse material conditions during pre-trial detention than members of other ethnic groups.[9]

There is no comprehensive study in Bulgaria addressing the situation of Roma in the criminal justice system. Various aspects of the problem are discussed in the literature related to the resocialisation of prisoners. Some of these publications have small sections dealing with

[9] Kanev, K. *Problems with the equal treatment of accused persons in pre-trial proceedings in Bulgaria*, Sofia, April 2022. Available at: https://bghelsinki.org/en/reports/problems-with-the-equal-treatment-of-accused-persons-in-pre-trial-proceedings-in-bulgaria

Roma.[10] Some of the conclusions in these works are not based on comprehensive research, but rather on the authors' personal perceptions. Another part of these publications recognises the need for a differentiated approach to the re-socialisation of Roma prisoners and refers to the discrimination to which they are subjected in society.[11]

In 2019, the BHC conducted a study of discrimination and bias against Roma in the criminal justice system within the framework of a project co-financed by the European Commission. It concerns the available information on the topic and focuses further on the motivation of the actions of the various participants in the criminal proceedings. But it does not address the resocialisation of prisoners.[12] Reports and recommendations from various international organisations, as well as judgments of the European Court of Human Rights, discuss discrimination against Roma in the criminal justice system, but not in the context of serving sentences and resocialisation.

1. NATIONAL LAW AND POLICIES FOR RESOCIALISATION OF OFFENDERS

1.1. GOALS OF THE PUNISHMENT

The Criminal Code (CC) of Bulgaria was adopted back in 1968. In line with the Soviet criminal law doctrine, which dominated at the time, the goals of the punishment are defined in the general part of the Code in a similar manner as in the Soviet criminal law. According to Article 36, § 1 of CC, "[p]unishments are imposed with the goal: 1) to rehabilitate and re-educate the prisoners towards observing the laws and public morals, 2) to act as a deterrence and prevent the commission of other crimes and 3) to act as an education and deterrent to other members of society ".[13] Although this provision is formulated in three points, the Bulgarian doctrine accepts that there are in fact four goals of the punishment: rehabilitation and re-education of the prisoner, exerting intimidation over him/her, preventing the possibility of his/her reoffending and deterrent effect on others.[14] The case-law of the courts is not unequivocal as to which of these goals is the leading one. According to some of the case-law, the punishment is not only a just and proportionate retribution to the committed crime, but also a means for achieving the goals stipulated in Art. 36, which fall within the scope of the individual and the general deterrence. The latter has a leading role, whilst the individual deterrence is just "a means to carry out the general deterrence".[15] A Supreme Court of Cassation ruling explicitly stated that the "primary goal of the punishment is to influence the offender so that he/she reconsiders his/her behaviour towards observing the law, as well as to re-educate the offender and have

[10] See, e.g.: Hadjiiski, M., N. Petrova, T. Minev. *Penitentiary pedagogy*, Veliko Turnovo, Faber, 1999; Minev, T. *Foundations of penitentiary social re-educational work and probational work*, Veliko Turnovo, Faber, 2003; Hadjiiski, M., T. Minev, *Handbook for professionals working with prisoners*, Sofia, 2016 (in Bulgarian).

[11] Hadjiiski, M., T. Minev, *Handbook for professionals working with prisoners*, pp. 65-66 (in Bulgarian).

[12] Angelova, D., S. Kukova. *Guilty by default: discrimination and bias against Roma in the criminal justice system in Bulgaria*, Sofia, BHC, 2020 (in Bulgarian).

[13] *Criminal Code* (CC), Art. 36, para. 1.

[14] Stoynov, A. *Criminal Law: general part*, second edition, Sofia, Ciela, 2019, pp. 457-459; Vladimirov, R., K. Hristova, N. Stefanov. *Criminal Law: general part*, Sofia, Ciela, 2009, pp. 250-251.

[15] Supreme Court (SC), Ruling № 528/1993 on criminal case 377/1993.

a deterrent effect on society as a whole".[16] Part of this doctrine holds the view of the priority of general deterrence,[17] while other aspect opposed this view. There are two main arguments for the latter. On one hand, it points to the need for a primary goal of the punishment with regards to the specific circumstances of the particular case[18]. On the other hand, it emphasises that rehabilitation and re-education are primary goals of punishment since they are "the most radical instrument for protecting society against crimes".[19]

The Criminal Code offers a specific provision on the goals of the punishment regarding juvenile offenders, namely youngsters between the ages of 14 and 18. According to Article 60 "[p]unishment is imposed on juveniles with the main goal to re-educate them and prepare them for community service".[20] The doctrine is unequivocal in its stance about the latter being the main objective of the punishment for juveniles, while at the same time not excluding any of the other goals mentioned in Art. 36, § 1.[21]

The Bulgarian criminal law system provides that the rehabilitation of persons deprived of liberty can be achieved through meaningful interventions in the place of serving the sentence before the term of punishment has come to an end. To that end, Article 70 of the Criminal Code provides the possibility for early release if the prisoner demonstrates they have corrected their behaviour.[22] Early release can be decided on by a court after the elapse of a certain portion of the sentence, which is different for the different categories of prisoners. Early release is conditional – a probation period is set for the sentenced person amounting to the remaining part of the sentence, and probational measures are implemented. If within the probation period the prisoner on parole commits another intentional crime punishable with imprisonment or the probation measures are not fulfilled, the unserved part of the previous sentence is added to the new one. If within the probation period he/she commits an unintentional crime, the court may rule for the unserved part of the sentence not to be served or to be fully or partially served.[23] Until 2017, a parole process could be initiated either by the prison administration (the so called "interior parole") or by a prosecutor (the so called "exterior parole"). Since the beginning of 2017, early release petitions can be initiated by the prisoners themselves. As evidence for rehabilitation, the courts accept the low risk of re-offending, overcoming the moral and behavioural deficits, involvement in work and attitude towards work, earning awards and receiving penalties, the family circumstances, having a profession and a critical attitude towards the committed crime. The courts have adopted the view that the prisoner should accept responsibility for the committed crime and at least partially acknowledge the sentence as fair.[24] The courts also insist that when prisoners demonstrate persisting criminal

[16] Supreme Court of Cassation (SCC), Ruling № 496/2013 on criminal case 1590/2013.

[17] Filchev, N. "Justification, goals and severity of the punishments", *Legal Thought*, № 3, 1995, p. 71.

[18] Girginov, A., Z. Traikov. *Commentary on the Criminal Code: General Part*, v. II, Sofia, Sophy-R, 2000, p. 157. This approach has its roots in the tradition of the criminal law of socialist Bulgaria. See: Nenov, I. *Criminal Law in the People's Republic of Bulgaria*: General part, Sofia, NI, 1972, p. 450.

[19] Stoynov, A. *Criminal Law: General Part*, p. 457.

[20] CC, Art. 60.

[21] Girginov, A., Z. Traikov. *Commentary on the Criminal Code: General Part*, v. II, p. 361.

[22] CC, Art. 70, § 1.

[23] CC, Art. 70, § 6 and 7.

[24] Plovdiv Court of Appeal, Ruling No. 88/11.03.2014 on criminal case No. 81/2014; Sofia Court of Appeal, Ruling No. 3/7.01.2020 on criminal case No. 13/2020; Sofia Court of Appeal, Ruling No. 686/9.06.2021 on p.c.c. No. 605/2021.

inclinations, it is necessary that they demonstrate sustainable positive trends towards correction and rehabilitation.[25]

1.2. EXECUTION OF PUNISHMENTS THROUGH SOCIAL ACTIVITIES AND EDUCATION WORK

Adapting the legal framework and practices towards achieving the goals of the punishment through varied social activities and correctional work is among the key courses of the reforms in the area of the execution of punishments during the period of transition to democracy in Bulgaria. The reforms commenced in 1990 with the new concept for correctional work with persons deprived of liberty. In the beginning, the legal framework lagged behind the adopted practices. Eventually, with the passing of the new Execution of Punishments and Pre-Trial Detention Act (EPPDA), the delay was compensated.[26] Notwithstanding, the social activities and correctional work in Bulgarian prison institutions is still insufficient as substance and largely underfunded.

According to Article 2 of the EPPDA, the execution of punishments should strive to achieve its goals, among other things, through differentiation and individualisation of the criminal-executive effect aimed at correction and re-education of the prisoners, depending on their behaviour.[27] This should be the main purpose of the social activities and the correctional work within the prison institutions. These activities, according to the law, are the main instruments to support prisoners in their resocialisation, assist them in the process of their personal development and encourage them in developing skills and mindset for a law-abiding way of life.[28] The social activities and the correctional work are carried out on an individual as well as group level. EPPDA has outlined a broad range of activities. They include diagnostic work and individual correctional work; intervention aimed at decreasing the risk of re-offending and the risk of causing harm; education and qualification of the prisoners and organising varied creative, cultural and sports activities, as well as religious support.[29] EPPDA and the Implementing Directives for EPPDA (IDEPPDA) regulate each of the aforementioned activities separately.

1.2.1. DIAGNOSTIC ACTIVITIES AND INDIVIDUAL CORRECTIONAL WORK

The diagnostic activities within the penitentiary institutions include assessment of two types of risks – of re-offending and of causing harm, psychological assessment of each prisoner and study of the prisoners' groups and communities. These activities are carried out by the inspectors on social activities and correctional work (ISACW), the probation inspectors, the inspectors-psychologists and the inspectors-pedagogues.[30] The diagnostic activities

[25] Sofia Court of Appeal, Ruling No. 158/5.05.2020 on criminal case No. 378/2020.

[26] See: Traikov, Z. *Criminal-executive law*, Sofia, Albatros, 2007, pp. 228-229.

[27] EPPDA, Art. 2, p. 2.

[28] EPPDA, Art. 152, § 1.

[29] EPPDA, Art. 152, § 2.

[30] IDEPPDA, Art. 120.

commence with the very admission of a prisoner to the prison reception section. At this point a risk assessment of potential harm is conducted for all prisoners with sentences of up to six months and for remand prisoners. A multifaceted risk assessment is conducted for all other categories of prisoners.[31] The criteria for conducting the risk assessment for harm and re-offending are drafted by the Minister of Justice.[32] Persons with mental disorders for whom it is difficult to carry out such diagnostic activities undergo psychological and psychiatric examination.[33] Parallel to this, from the reception phase convicted and remand prisoners are enrolled in special programmes for adaptation to prison life that run for up to three months. These programmes include, among other things, information in clear and simple language about the types of social activities and education work and their goals that the prison provides.[34] Participation in adaptation programmes is mandatory for all prisoners. No working days (pursuant to Art. 178 of the EPPDA) are accredited for this participation.[35]

Upon completion of the adaptation programme, an **individual sentence plan** is drafted for each convicted prisoner. It serves as the basis for the individual correctional work carried out during the term of the sentence. According to EPPDA, the individual plan should be drafted based on the type and nature of the committed crime, the duration of the punishment, the risk assessment and the initial place for deprivation of liberty.[36] The plan identifies the problematic areas, the main goals and activities for their achievement, the responsible experts in charge of all the activities and sets a timeline for their completion.[37] An annual report on the implementation of the individual plan is drafted for each convicted prisoner. Re-planning is conducted if changes take place during the correctional intervention.[38] In the low-risk cases, the re-planning is carried out by ISACW with the particular prisoner; in higher-risk cases, other expert prison personnel are included in the process.[39]

The prisoner's individual plan can involve, on one hand, individual correctional work, and on the other – enrolling him/her in intervention programmes. The individual correctional work with prisoners is directed toward overcoming behavioural problems and adaptive crises, cultivating analytical and problem-solving skills, overcoming difficulties, anger management and adapting to the prison conditions, as well as to life outside prison.[40] Individual correctional work could involve being referred to outside organisations for solving particular problems.[41] By following this pathway, in compliance with the individual plan for execution of the sentence, the prisoner could be moved to a low-security type prison and then become eligible for early release.[42]

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[31] IDEPPDA, Art. 122a.

[32] EPPDA, Art. 154, § 5.

[33] EPPDA, Art.154, § 3.

[34] EPPDA, Art. 153.

[35] IDEPPDA, Art. 125, § 8. The Bulgarian system for serving the punishment deprivation of liberty provides that two working days count as three days from the length of the imprisonment when calculating the term of the sentence (CC, Art. 41, § 3).

[36] EPPDA, Art. 156, § 2.

[37] IDEPPDA, Art. 129, § 2.

[38] IDEPPDA, Art. 129, § 4.

[39] IDEPPDA, Art. 129, § 5 and 6.

[40] EPPDA, Art. 158; IDEPPDA, Art. 121.

[41] EPPDA, Art. 158, point 3.

[42] EPPDA, Art. 156, § 4.

Shortly before their release from prison, prisoners are enrolled in a programme for preparation to life outside prison. The programme duration can be between one and three months and involves an action plan. The plan consists of "realistic practical steps for coping with life outside of prison".[43]

The individual correctional work within the range and content provided by EPPDA and IDEPPDA presents a serious challenge for ISACW personnel. This type of work requires high professional competence, which requires expertise in the area of psychology of deviant behaviour, methods of social work, good interpersonal skills for establishing a relationship of trust with the prisoners and maintaining high ethical standards.[44] It is also important to achieve optimal, but not excessive workload for the ISACW personnel, which unfortunately is the vast majority of cases inside the Bulgarian prison institutions.

1.2.2. SPECIALISED INTERVENTION PROGRAMMES

The specialised intervention programmes are designed for individual and group work with the persons deprived of liberty, as provisioned in EPPDA, as well as in IDEPPDA. They are carried out inside the prison institutions by the ISACW personnel, assisted by other staff, as well as with the participation of volunteers and external experts. According to Art. 157 of the EPPDA, the specialised programmes have as their goal to motivate and encourage law-abiding behaviour; increase social competences, improve social skills and deal with addictions.[45] Participation of prisoners in these programmes is completely voluntary. Those of them who successfully complete a specialised programme for intervention are awarded working days pursuant to Art. 178, § 4 of the EPPDA, whereby 16 hours of group activities lead to a reduction of the prison sentence with three days.[46]

IDEPPDA regulates generally the content and the manner of implementation of the specialised programmes. According to the Implementing Directives, the programmes should include description of the methods that would bring about change in the attitudes, skills or behaviour of the prisoners; description of each session from the programme; a scale of assessment to measure progress; guidelines for administering and supervising the programme and a feedback form.[47] The professionals running the programmes have to be appropriately trained. Each programme is administered by two persons and during its course it is supervised by a third person. The persons in charge of the group programme receive supervision at least once a year.[48] Each group session is carried out based on a preliminary plan, and a protocol is drafted upon completion. Furthermore, a report is prepared, including analysis and assessment of the achieved progress by the participants in the specialised group work.[49]

[43] EPPDA, Art. 157a.

[44] Traikov, Z. *Criminal-executive law*, Sofia, Albatros, 2007, p. 235.

[45] EPPDA, Art. 157, § 2.

[46] IDEPPDA, Art. 125, § 8.

[47] IDEPPDA, Art. 125, § 2.

[48] IDEPPDA, Art. 125, § 4.

[49] IDEPPDA, Art. 125, § 5 and 7.

1.2.3. EDUCATION, TRAINING AND QUALIFICATION OF PERSONS DEPRIVED OF LIBERTY

The Bulgarian doctrine has stipulated that the educational and vocational training inside the places for deprivation of liberty "are primary means for achieving the goals of the punishment".[50] Nevertheless, up until 2007 inside prisons and correctional institutions only one elementary vocational technical school and five secondary vocational-technical schools were opened.[51] Expanding the network of schools inside the places for deprivation of liberty commenced only in recent years. The opportunities for prisoners to complete a tertiary educational degree, however, are limited. According to Art. 74, § 2, point 3 of the Higher Education Act, a student, a PhD student or a post-graduate student is removed from the school for a period of time in case of prison sentence for an intentional crime of general character.[52] This stipulation restricts access to tertiary education even of convicted individuals with conditional sentences. The lack of internet access in prisons, as well as the insufficient experience and flexibility of the Bulgarian universities in organising distance learning courses, renders practically impossible the tertiary education of prisoners sentenced for unintentional crimes.

According to EPPDA, the participation of prisoners in education, practical and qualification activities is assessed on the basis of the achieved degree of rehabilitation and correction.[53] The Ministry of Education and Science (MES) exercises control over the prison schools. At the proposal of the Minister of Justice, the Minister of eEducation opens, closes and restructures all types of schools. The headmasters and the teachers are employed under the Pre-School and School Education Act.[54] The same procedure is used to implement the study plans and curriculums. MES funds the schools and issues the diplomas for a completed educational degree or a vocational qualification.[55] The Ministry of Justice, in turn, provides the premises for conducting the education and qualification courses inside the prisons.

Juvenile prisoners under 16 are obliged to enrol in formal education courses. Those aged above 16 have the option not to enrol.[56] This distinction is based on Art. 53, § 2 of the Constitution of the Republic of Bulgaria according to which school education up to the age of 16 is mandatory, but above that age it is not mandatory.

Educational, training and qualification activities in the places for deprivation of liberty include two types of education - general and vocational; vocational training; literacy and professional courses; social education.[57] The formats in which they are carried out are daytime, evening, part-time, individual and autonomous.[58] The participation of the prisoners in these activities depends on the availability of the respective institutions and services within the penitentiary institution in which they are placed. If there is no school in the respective prison, prisoners can

[50] Traikov, Z. *Criminal-executive law*, Sofia, p. 235.

[51] *Ibid*, p. 236.

[52] Higher Education Act, Art. 74, § 2, point 3.

[53] EPPDA, Art. 159, § 2.

[54] EPPDA, Art. 160. Their appointment is coordinated with the prison director (IDEPPDA, Art. 138, § 2).

[55] EPPDA, Art. 161.

[56] EPPDA, Art. 162, § 2.

[57] EPPDA, Art. 162, § 3.

[58] EPPDA, Art. 162, § 4.

ask to be transferred to another facility, although this may result in losing contact with their families and the need to adapt to a new environment. Both remand and convicted prisoners can attend educational activities.[59] For convicted prisoners their enrolment in any educational activities decreases the term of their sentence, whereby 16 study hours count for 3 days of serving of the sentence. In addition, the time spent for preparation and sitting for exams is recognised as five working days for each passed exam. If a prisoner works and studies at the same time or is signed up for other activities, the working days are estimated as a total, but they cannot exceed 22 days a month.[60] Moreover, successful participation in educational and qualification activities is reflected in positive remarks in the periodical reports on the implementation of the individual sentence plan.[61]

The prison administrations, and in particular the ISACW personnel, as well as the teachers from the prison schools, are expected to be pro-active in seeking and motivating prisoners into joining educational and qualification activities.[62] They are obliged to conduct purposeful consultative work with the prisoners who refuse to take part in planned educational or qualification activities.[63] The ISACW personnel are members of the pedagogical councils of the prison schools, where such councils exist.[64] The ISACW personnel also have the duty to study the needs of the prisoners regarding their professional training. They send feedback to the central penitentiary administration about these needs in consultation with the employment bureaus in order for the penitentiary administration to fund and organise courses for professional qualification in the respective prisons.[65]

1.2.4. PROVIDING VARIOUS CREATIVE, CULTURAL, SPORTS AND RELIGIOUS ACTIVITIES

EPPDA and IDEPPDA regulate the possibilities and the process of organising creative, cultural, sports and religious activities in the prisons. For some of these activities the legal provisions are rather vague. They talk about ”creating conditions”, albeit adding “when possible“. Such is the case with the organisation of sports activities and exercise for one hour a day beyond the time allocated for outdoor stay.[66] In other cases, however, like for instance the setting up and maintenance of libraries, the regulations are more explicit. Libraries must be organised in each prison, prison hostel or correctional facility and all prisoners must have access to them at least once a week.[67]

According to IDEPPDA the creative and cultural activities of prisoners include amateur performances like theatrical shows, concerts, recitals or other events related to national or traditional holidays; art and craft exhibitions for prisoners as well as outside participants; hobby club activities; attending cultural or religious events, sporting events, museums, exhibitions,

[59] IDEPPDA, Art. 133, § 4.

[60] IDEPPDA, Art. 134, § 2, 4 and 5.

[61] IDEPPDA, Art. 136.

[62] IDEPPDA, Art. 141.

[63] IDEPPDA, Art. 137.

[64] IDEPPDA, Art. 144.

[65] IDEPPDA, Art. 146.

[66] EPPDA, Art. 164, § 1.

[67] EPPDA, Art. 165; IDEPPDA, Art. 154, § 2.

historical or other places of interest outside of prisons; organising a variety of cultural programmes by out-of-prison entities.[68] Juvenile prisoners, women prisoners and "certain categories of male prisoners" are allowed to participate in hiking trips, as well as cultural and sporting events outside the prison facilities.[69] This particular provision is of debatable constitutionality, as far as it allows access to these activities for all women and juveniles, but only for "certain categories of male prisoners" without specifically defining them. The IDEPPDA adopts a similar approach when regulating the physical exercises and sports activities in line with prisoners' age and gender. Again there is a separate arrangement for "juveniles, women and certain categories of men".[70]

Prisoners are also allowed to watch television and video programmes every day until 10 p.m. With a special permission from the prison governor this time restriction can be extended on a case-by-case basis. Prisoners can keep and use personal TV and radio equipment.[71]

EPPDA and IDEPPDA also regulate the possibility to satisfy the religious interests of prisoners through participation in religious masses and ceremonies, access to religious literature and personal consultations. All the officially registered religious denominations in the country are allowed access to the prison facilities. The religious representatives can carry out activities inside the prison grounds and meet privately with prisoners. Any official religious denomination should present their registration papers and a list of clerics who are appointed to carry out activities on their behalf in prison.[72] It is possible for clerics from the denomination with the most followers in prison to be employed by the institution on a permanent basis.[73]

1.2.5. **WORK IN PRISONS**

The approach towards involvement of prisoners in work activities has undergone a major evolution during the period of the democratic transition in Bulgaria, both in the field of legislation and in the doctrine. Under communism, labour inside prisons was seen as a key instrument for rehabilitation and was mandatory. All prisoners had to partake in work activities and were punished if they refused. A reflection of this approach is Art. 41 of the Criminal Code, according to which the serving of a prison sentence "goes along with a suitable, adequately remunerated community work, the goal of which is the rehabilitation of the prisoner, as well as giving him/her a profession or upgrading his/her professional qualification".[74] In the doctrine, the requirement for obligatory work during the serving of the sentence is justified with reference to the theoreticians of the classic 19th century school, in particular Franz Von Liszt, according to whom "the serving of a prison sentence without mandatory labour does not do any good, but only causes harm".[75] The emphasis is placed on the "rehabilitating role of labour", acquiring work habits and skills, enhancing mental skills, developing confidence in

[68] IDEPPDA, Art. 149.

[69] EPPDA, Art. 164, § 3.

[70] IDEPPDA, Art. 151, § 3.

[71] IDEPPDA, Art. 153, § 1 and 2.

[72] IDEPPDA, Art. 155, § 1 and 2.

[73] EPPDA, Art. 166 and 167.

[74] Criminal Code, Art. 41, § 1.

[75] Traikov, Z. *Criminal-executive law*, p. 206.

one's own abilities, collaboration and mutual aid, maintaining and strengthening the prisoner's wellbeing.[76] Accordingly, all places for deprivation of liberty had the responsibility, not only to insist on involving prisoners in work, but also to provide work opportunities.

This doctrine, which dominated also in other communist countries, led to the mass exploitation of forced prison labour and even the construction of prisons next to large factories with the aim of conveniently using prisoners' labour. A case in point is the building of the Kremikovtsi prison hostel in Sofia near the then largest metallurgical plant in Bulgaria (currently bankrupt).

In the period of democratic transition, the emphasis on the exceptional role of labour in the rehabilitation of prisoners was somewhat relieved although the provision of Art. 41, § 1 of the CC remains in force. The EPPDA (adopted in 2009) highlights that prison work has as a goal the resocialisation of prisoners, but at the same time there is a caveat that "the work a prisoner is employed in is determined by the prison administration in line with existing possibilities".[77] In the circumstances of a market economy the possibilities for work may vary, in some cases being quite modest. With this in mind, the provisions estimating the served sentence, according to which two working days are recognised as three days of serving the prison sentence, makes work in prison a very attractive prospect for most inmates. Many of them even agree to work without remuneration.

According to EPPDA, prisoners work mainly in workshops and farms within the prison grounds.[78] They are also allowed to work in outside facilities if the legal entities and persons employing them provide healthy and safe working conditions.[79] Under law the working conditions for prisoners are defined by labour law.[80] However, this is not always the case. Prisoners cannot be employed individually, no social payments for pension or other benefits are provided that are normally due under individual contracts. The legal or individual entities using prisoners' labour pay the remuneration to the state company "Prison Work Fund".[81] Out of these payments the prisoners receive a certain amount that cannot be under 30% of the due remuneration.[82] The Prison Work Fund signs "contracts for lending labour" with employers that stipulate the conditions, only part of which (working days, duration of the working days, breaks and etc.) are in accordance with the labour law.

Prisoners are enrolled in employment and allocated to their workplaces by a commission chaired by the prison governor, the prison hostel director or by the director of the correctional facility. Also sitting on the commission are the deputy director for regime, surveillance and security activities, the head of the "Social activities and education" department, a medical professional, a psychologist and a representative of the local branch of the state company "Prison Work Fund".[83] Art. 164 from IDEPPDA regulates the procedure for employing prisoners. Other provisions of the same act regulate the requirements for the work conditions; medical control; occupational safety; prisoners' duties during work; their workplace allocation depending on the security regime; performing voluntary work and extra working hours; setting

[76] *Ibid*, p. 207-209.

[77] EPPDA, Art. 172, § 4.

[78] EPPDA, Art. 173, § 1.

[79] EPPDA, Art. 174.

[80] EPPDA, Art. 175, § 2.

[81] EPPDA, Art. 175, § 1.

[82] EPPDA, Art. 78, § 1.

[83] IDEPPDA, Art. 35.

up and managing the workplaces inside prisons and outside; the contents of the "contracts for lending labour".

According to IDEPPDA, the active involvement of prisoners in work is encouraged and taken into account when determining the degree of rehabilitation and correction they have achieved. Reversely, a negative attitude towards work is considered an aggravating circumstance when reviewing a prisoner's legal situation.[84] Prisoners who turn down work are subject to redrafting of their individual sentence plans and they become subjects of individual correction intervention for assessing their interests and motivating them to take up work.[85]

1.2.6. PARTICIPATION OF PRISONERS AND OUTSIDE ORGANISATIONS AND INSTITUTIONS

EPPDA and IDEPPDA provide the opportunity to attract external organisations and volunteers who offer various creative, cultural, sports and religious activities inside the penitentiary institutions.[86] Only the religious activities, through permanent employment of clerics, are funded by the prison system budget. The expectation is that the other external organisations would be in a position to carry out their activities in prisons on a pro bono basis.

The so-called local monitoring commissions set up within municipalities also have a role in the process of resocialisation of prisoners. According to EPPDA, the monitoring commissions carry out "community control over the activities inside the places for deprivation of liberty" and "support the resocialisation of the persons deprived of liberty" by organising different activities. In particular, they can arrange social services within the municipality, make propositions for altering a regime, transferring prisoners to prisons with lighter or stricter regimes or propose them for early release, make propositions and give opinions on applications for pardon, support prisoners' families, offer assistance and support in finding work and accommodation to newly-released prisoners.[87] According to the law, the propositions and recommendations of the monitoring commissions are mandatory for the prison director. In case of failure to comply with a proposition or a recommendation by the monitoring commission, the matter is referred to the Director General of the Directorate General for the Execution of Punishments.[88]

For the purpose of carrying out activities inside prisons, self-governing bodies are set up. They represent the prisoners before the prison administration and are formed with a secret vote. The structure and the number of the members that make up these bodies are approved by the prison governor.[89] The self-governing bodies include council of the community, which includes a representative of each group; group councils comprised of at least three people; a school board, if there is a school, made up of at least five people[90]. The candidatures for the group or school councils are proposed at a general meeting of the collective body, and for the council

[84] IDEPPDA, Art. 170.

[85] IDEPPDA, Art. 171, § 4.

[86] EPPDA, Art. 163, § 2, Art. 167; IDEPPDA, Art. 149, point 2 and 5, Art. 151, § 6, Art. 155.

[87] EPPDA, Art. 171, § 1.

[88] EPPDA, Art. 171, § 3.

[89] EPPDA, Art. 169, § 2 and 3.

[90] IDEPPDA, Art. 156.

of the community – at a delegates meeting elected by the groups.[91] As part of the community council, separate departments are formed – for internal order, household and hygiene, cultural activities, general and professional education, physical exercises and sports, production, editorial board, religious support. As part of the group councils, departments are formed for – internal order, household and hygiene, cultural activities, physical exercises and sports and production.[92] The self-governing bodies put through to the prison administration propositions for improving the conditions, support the organisation of activities and initiate additional forms of work with the groups and the communities.[93] The community councils and the group councils are run by the respective heads of social activities and correctional work, while the school councils are led by the schools' headmasters.[94]

The persons deprived of liberty can set up their own organisations and register them in accordance with the Non-Profit Legal Entities Act. In 2012, a group of prisoners established and registered the Bulgarian Prisoners' Rehabilitation Association. It has been actively working in support of prisoners' rights and maintains a webpage.[95]

1.2.7. LEGAL CONSEQUENCES OF NOT CARRYING OUT SOCIAL AND CORRECTIONAL WORK

The involvement of prisoners in activities aimed at their resocialisation and social integration has doubtless benefits not only for them, but for society as a whole. Such social activities can lead to considerable reduction of the sentences, as well as to easing prisoners' regimes. In this context, the question arises about the scope of the positive duties of the state and of the prison administrations regarding the organisation of such activities. Another pertinent question concerns the legal consequences of not carrying out social and correctional work when this is not the prisoner's fault, but on the part of the prison administration. What are the legal means available to prisoners to protect their interests in such situations?

In a number of lawsuits prisoners have claimed that not being involved in social and correctional activities constitutes a breach on the ban of torture, cruel, inhuman or degrading treatment pursuant to Article 3 from EPPDA. Some administrative courts are inclined to accept such arguments.[96] The Supreme Administrative Court (SAC) has admitted that the case of prison administration not fulfilling its duties to organise social and correctional activities for the plaintiff can fall within the scope of Article 3 of the EPPDA, while determining whether there has been a breach depends on the assessment of the material facts and circumstances.[97] Currently, however, the case-law of the Bulgarian courts has not established any standards that would define what concrete circumstances of non-fulfilment of duties would constitute a breach of Article 3.

[91] IDEPPDA, Art.158, § 2.

[92] IDEPPDA, Art. 159, § 1 and 2.

[93] IDEPPDA, Art. 161.

[94] IDEPPDA, Art. 160.

[95] https://bpra.info/.

[96] Example: Varna Administrative Court, Ruling № 2135/7.11.2018 on admin. case № 909/2018.

[97] SAC, Ruling № 9124/17.06.2019 on a. c. № 14290/2018; SAC, Ruling № 9681/24.06.2019 on admin. case № 14165/2018; SAC Ruling № 16991/12.12.2019 on admin. case № 463/2019.

Failure to involve prisoners in social and correctional activities on account of administrative failures does not improve their chances for early release from prison. For example, the Varna Regional Court has argued that the fact that the plaintiff was not given the opportunity to participate in certain activities "is not of prevailing significance insomuch as the prisoner should demonstrate with his own actions and behaviour that he had been rehabilitated and that his attitude towards the activities inside prison involving him is positive and that his attitude towards the whole rehabilitation process is also positive, however there is no information on the case to this effect".[98] This is a bizarre and quite unacceptable approach since the prisoner was under the complete control of the prison administration. He would be in a position to present evidence for his rehabilitation "with his own actions and behaviour" if he had been given the opportunity to demonstrate this through participation in resocialisation activities and programmes. Placing the burden of proving their own rehabilitation on the prisoners themselves when opportunities to demonstrate this are not provided is not a fair justice, to say the least, it is even a mockery of one of the parties in the court proceedings.

1.3. POLICIES FOR SOCIAL REINTEGRATION OF PRISONERS

The policies for the social reintegration of prisoners are laid out mainly in the government strategies for development of the places for deprivation of liberty. Over the last 13 years, two such strategies have been adopted in Bulgaria. The first one is the Strategy for Development of the Places for Deprivation of Liberty in the Republic of Bulgaria in 2009-2015 (Strategy 2009-2015), adopted with a decision by the Council of Ministers on 8 December 2008.[99] A main focus in this strategy is the improvement of the material conditions in the penitentiary institutions. In Bulgaria they happen to be some of the worst in Europe. In 2015, the European Court of Human Rights in Strasbourg delivered a pilot judgment in the case *Neshkov and Others v. Bulgaria*, where the Court established systematic violations of Article 3 of the European Convention on Human Rights and issued recommendations for improving the material conditions in prisons, as well as introducing an effective preventive and compensatory remedy for the protection of prisoners against inhuman and degrading treatment.[100] The same year, the European Committee for the Prevention of Torture issued a public statement on Bulgaria, in which it reiterated its findings about the extremely poor material conditions in three Bulgarian prisons, as well as the serious problem with the ill-treatment of prisoners.[101]

In addition to addressing the material conditions, Strategy 2009-2015 formulated goals and activities related to the social reintegration of prisoners. They are part of the chapter on "humane treatment of offenders and safeguarding the rights and freedoms in full scope through changes in the legal framework and the execution of punishments". In mid-term perspective, the strategy envisaged the development and implementation of a pilot project for effective correctional models inside prisons optimising the processes for standardisation, validation and adaptation of the mechanisms of assessment of adult and juvenile offenders;

[98] Varna Regional Court, Ruling № 1070/4.10.2017 on case № 1153/2017.

[99] Council of Ministers, *Strategy for development of the places for deprivation of liberty in the Republic of Bulgaria for the period 2009-2015*, available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=493.

[100] ECtHR, *Neshkov and Others v. Bulgaria*, Nos. 36925/10 et al., Judgment of 27 January 2015.

[101] CPT, *Public statement on Bulgaria*, CPT/Inf (2015) 17, Strasbourg, 26 March 2015.

development and implementation of new penitentiary programmes for treatment of prisoners with drug and alcohol addictions inside several prisons, and development and approbation of specialised programmes for work with offenders. In the long-term perspective, the strategy envisages the development and implementation of new correctional programmes designed to differentiate between the needs of particular groups of prisoners, increasing the effectiveness of work with offenders through closer cooperation with partner organisations and institutions (including NGOs), as well as developing and implementing education programmes with alternative teaching methods for the prisoners.[102] The action plan for the implementation of the strategy states that the development and implementation of new correctional programmes is expected to have as a result enrolling groups of prisoners in programmes and activities for personal change and mitigating the factors that present the risk of re-offence.[103] For the majority of these activities, however, the action plan did not provide any additional funding. What is more, it states that additional funding is not necessary.

In 2010, the Bulgarian government adopted a Programme for Improving the Material Conditions in the Places for Deprivation of Liberty along with an action plan for its implementation.[104] The programme envisaged activities aimed at bringing the conditions in the living, service and common areas inside prisons up to the international standards and addressing overcrowding in the penitentiary institutions. This programme did not envisage activities for prisoners' social reintegration.

In 2019, the Bulgarian government adopted a Strategy for Development of the Penitentiary System in the Republic of Bulgaria for the period until 2025 and an action plan for its implementation (Strategy 2019-2025).[105] In addition to improving the material conditions and activities aimed at developing the professional competences of the prison guards, one of the main goals of this strategy is "improving the process of rehabilitation of offenders". In order to fulfil this primary goal, Strategy 2019-2025 envisaged the development of concrete initiatives aimed at improving the collaboration between the institutions concerned with the reintegration of the prisoners in society; activities aimed at supporting and encouraging the personal resources of the offenders and upgrading the instruments for diagnostics; organising activities with the offenders more frequently, thus decreasing the risk of reoffending and causing harm.[106]

The Action Plan for the Implementation of Strategy 2019-2025 envisaged a number of activities, e.g. improving group and individual work with prisoners aimed at preventing the risk of reoffending and harm; developing new instruments for diagnostics; collaboration with outside experts for the purpose of analysing and assessing the current instruments; keeping the opportunities for education and qualification of the offenders; increasing the possibilities

[102] Council of Ministers, Strategy 2009-2015, p. 10. See also the action plan for the implementation of the strategy, pp. 16-17.

[103] Action plan, p. 16.

[104] Council of Ministers, *Programme for improving the material conditions in the places for deprivation of liberty*, adopted with Protocol № 32.47 of CM of 8 September 2010 available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=642.

[105] Council of Ministers, *Strategy for the development of the penitentiary system in the Republic of Bulgaria for the period until 2025*, decision of CM №799/27 December 2019, available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1297.

[106] Council of Ministers, Strategy 2019-2025, p. 9.

for organising creative, cultural, sports and religious activities. All of these activities are planned to be carried out with funding from the budget of the Directorate General for the Execution of Punishments.[107]

The progress on achieving the goals set out in the Strategy and the Action Plan was to be reported regularly by Directorate General for the Execution of Punishments as part of its annual reports. In its latest report published in 2021 on the activities of 2020, the resocialisation and social integration work for the prisoners, focus on the social, administrative and psychological work and cover 24 pages, which is 17% of the full DGEP report.[108] The main activities in this area, according to the report, are focused on the differentiation between the interventions on the prisoners, first at their admittance to prison, then during the main period of their prison stay, and finally during the end stage. Another point of focus is the education and qualification activities; diagnostic activities; coordination of the activities for social education and collaboration with other institutions and organisations; less content is dedicated to the methodical and analytical work.

According to the same report, the total number of planned convictions in 2020 was 3,741, while in another 3,192 cases a re-planning of the conviction was carried out.[109] The total number of the carried out specialised programmes was 70, while the total number of prisoners who benefitted from them was 852.[110] It is worth noting the uneven coverage of these programmes in the different prisons. The share of prisoners who participated in them from the Varna and Lovech prisons was relatively high. In these two prisons, 60% of all prisoners benefitted from these programmes. However, in several other prisons – Vratsa, Plovdiv, Sliven and the Correctional Centre for Juveniles, no programmes were carried out in 2020 and hence not a single prisoner benefitted from them.

According to the report, the activities during the main period of serving of the sentence include individual and group work; cultural and information activities; education and vocational qualification; work; work involving the prisoners' legal status; social and education activities with the life sentenced prisoners and work with the self-governed prison bodies. A special part in the report is dedicated to the activities during the final stage of serving the sentence. They are carried out as part of the specialised group programme "Life in Freedom – Challenges and Choices". The programme facilitates re-establishing connections with family and friends, assistance in finding a job and providing all kinds of support from state institutions and NGOs.[111] There are two other programmes similar to this one that are currently in operation. The total number of prisoners who benefitted from these programmes during the final stages of their sentences in 2020 was 1,761.[112] Neither of the mentioned programmes, however, is designed to differentiate between the prisoners based on their ethnic or cultural identity.

In recent years, DGEP has actively applied for project funding from the EU structural funds. The projects were designed to support not only improvement of the material conditions inside

[107] Council of Ministers , *Action plan for the implementation of the Strategy for the development of the penitentiary system in the Republic of Bulgaria for the period until 2025*., p. 3-4.

[108] DGEP, *Report on the activities of Directorate General for the Execution of Punishments at Ministry of Justice in 2020*, Sofia, 2021 (DGEP Report-2020), available at: https://prisonreform.bg/otchet-gdin-2020/.

[109] DGEP, Report-2020, p. 22.

[110] *Ibid*, p. 23.

[111] *Ibid*, p. 38.

[112] *Ibid*, p. 39.

prisons, but also activities in aid of prisoners' resocialisation. The latter include training of the DGEP staff for education work with prisoners; rehabilitation of the prisoners, focusing on vulnerable groups (including Roma); assessment and analysis of prisoners' needs; conducting campaigns with stakeholders for inter-institutional collaboration in support of prisoners after their release; analysis of the current risk assessment instruments and introducing new ones; organising specialised training courses for the ISACW staff for studying new and successfully implemented foreign practices in the area of social work; training sessions for ISACW personnel and probation inspectors for upgrading their skills regarding analysis and work with high-risk offenders.[113]

2. POLICIES FOR COMBATING DISCRIMINATION AGAINST THE ROMA

In April 1999, for the first time since the beginning of the democratic transition in Bulgaria, the government adopted a Framework Programme for the Equal Integration of Roma in Bulgarian Society. Its declared goal is "the elimination of the unequal treatment of the Roma in Bulgarian society". According to the programme "the discrimination against the Roma in society preconditions the problems of the community in the socioeconomic, educational and cultural field".[114] The Framework Programme provides a set of measures in different spheres: protection against discrimination, employment, providing land, healthcare, housing policies, education, preservation of the Roma culture, establishing a culture of equality for Roma women. The enlisted areas outline key aspects of the policies for integration of Roma in Bulgarian society. Many of these policies, for instance measures in the sphere of education, envisaging desegregation of Roma education, housing policies, envisaging legalisation of illegally built Roma neighbourhoods, are still in the process of implementation and are far from completed. This programme, however, does not mention the discrimination against the Roma in the area of criminal justice and the execution of punishments.

Following the adoption of the Framework Programme, several consecutive governments have formulated and adopted action plans for its implementation. The measures provided in these plans mainly concern education, healthcare, housing and employment, but not the criminal justice system and the execution of punishments. At the same time, the government adopted separate programmes for the integration of the Roma in certain areas. Such were the strategy for educational integration of the children and pupils from the ethnic minorities, adopted in 2004,[115] the healthcare strategy for persons in a disadvantaged situation belonging to ethnic minorities,[116] adopted in 2005, and the national programme for improving housing conditions of the Roma, adopted in 2006.[117]

In the eve of the Decade of the Roma inclusion in 2005, the government adopted a National Action Plan for the Decade of Roma Inclusion 2005-2015.[118] This plan provided measures in

[113] The projects and their activities are available on the website of the government information system for administration and monitoring of the EU funds in Bulgaria (ISAM): https://eumis2020.government.bg/.

[114] The Framework Programme is available at: http://ophrd.government.bg/view_file.php/4688.

[115] Available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=396.

[116] Available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=658.

[117] Available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=433.

[118] Available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=569.

the field of education, healthcare, housing, employment, protection against discrimination and culture. Nothing was provided, however, regarding the treatment of Roma in the area of criminal justice and execution of punishments.

In 2009, the Council of the European Union adopted Conclusions on the Inclusion of the Roma.[119] In that document, the EU established Common Basic Principles for the inclusion of the Roma and called on the European Commission and the member states to take them into account when developing their domestic strategies for the integration of the Roma minorities. In response to that document, in May 2010 the Bulgarian government adopted a Framework Programme for the Integration of Roma in Bulgarian Society (2010-2020).[120] That programme also provided measures in the field of education, healthcare, housing conditions, employment, non-discrimination and culture. Some of the guidelines for work in the area of protection against discrimination include: ensuring the proper functioning and development of the legal framework, the institutional structures and the instruments for protection against discrimination; integrating the needs, problems and rights of the Roma in the common integrational governmental and sectoral policies; increasing the opportunities for employing Roma in the state and local administrations; strengthening the inter-institutional coordination for a more effective implementation of the policies for integration of the Roma; improving the mechanisms of collaboration, dialogue and consultations between the state sector, the Roma and the NGOs working towards the integration of Roma; boosting the administrative capacity and increasing the sensitivity of the officers and the senior staff in the public administration at all levels regarding the rights of minorities, non-discrimination and interaction in a multi-ethnic and multicultural society; improving the work efficiency of the law-enforcement officers in a multi-ethnic environment, while abiding by the human rights' standards; encouraging cultural pluralism in the media and applying professional standards for ethical coverage of Roma topics; intensifying work in the communities, especially with children and youths with the purpose of improving social skills for avoiding risks, creating conditions for activities that would develop their potential and increasing the opportunities for socialisation. The implementation of the programme, which has similar priorities with the National Action Plan for the Decade of the Roma Inclusion 2005-2015, was supposedly carried out through the mechanisms of the Action Plan. The previously adopted strategic documents were to be brought in line with the Framework Programme.

The period of operation of the Framework Programme was somewhat limited. In March 2012, the National Assembly adopted a National Strategy of the Republic of Bulgaria for Integration of the Roma (2012-2020).[121] This is the only strategic document concerning the Roma population in Bulgaria adopted by the Bulgarian Parliament throughout the whole period of transition to democracy. The Strategy was prepared in response to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the

[119] Council of the European Union, *Council Conclusions on Inclusion of the Roma*, 2947th Employment, Social Policy, Health, and Consumer Affairs, Council Meeting, Luxemburg, 8 June 2009, available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/108377.pdf.

[120] Available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=609.

[121] Available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=726.

Committee of the Regions regarding National Roma Integration Strategies.[122] The priorities of the National Strategy include education, healthcare, housing conditions, employment, rule of law and non-discrimination, culture and media. In the area of rule of law and non-discrimination, the Strategy set goals that are formulated too broadly: strengthening the safeguards for effective protection of the rights of the Bulgarian citizens in a vulnerable social situation belonging to ethnic minority groups; efficient implementation of the policies for integration of the Roma aimed at achieving equality, dignified existence and meaningful involvement in public life; overcoming cultural barriers in communication and a variety of discrimination attitudes; establishing tolerant interethnic relations; creating a culture of equality for the Roma women and encouraging their meaningful individual, social and economic role in public life; increasing the institutional and public sensitivity and intolerance towards acts of discrimination and "hate speech"; boosting the capacity of law-enforcement agencies regarding the combat against crimes and acts of discrimination, violence or hate, based on ethnicity. Within the operating period of the National Strategy, the Government drafted several action plans and published a few administrative monitoring reports on its implementation. Many of the activities, described in the monitoring reports do not have a clear connection to reality. For instance, in the 2013 report we find: "The main focus is prevention of committing racially-motivated crimes and the propaganda against ethnic minorities, as well as imposing sanctions on the perpetrators of such crimes".[123] In fact, the criminal trials initiated for this type of crimes can be counted on the fingers of one hand, while the pronounced sentences are even fewer. Other activities that are reported in the chapter on non-discrimination include a large number of trainings for state officers in the framework of EU-funded projects, the impact of which on the prevention of Roma discrimination is unclear. Following the general elections of March 2017, coalition partners in the newly-formed government became three far-right nationalist formations with notorious legacy of racist provocations against the Roma. Their involvement in the government not only did not prevent, but actually encouraged new severe violations of the rights of the Roma.

In March 2021, the government tabled for a public debate a new National Strategy of the Republic of Bulgaria for equality, inclusion and participation of the Roma (2021-2030).[124] The priorities of this strategy are the same as those in the preceding programmes and strategies: education, healthcare, employment, housing conditions, rule of law and non-discrimination, culture and media. In the area of non-discrimination, the strategy formulated three main goals: enhancing the institutional culture and expertise of the public authorities; safeguarding and effective protection of the rights and dignity of the Bulgarian citizens in vulnerable social situation, belonging to ethnic minorities; encouraging civic participation and awareness of civil rights and duties of the persons, inhabiting areas with high poverty rates. For the first time in a project for a strategic document, specific goals were formulated concerning "improving the

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[122] EC, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: National Roma Integration Strategies: a first step in the implementation of the EU Framework*, COM/2012/0226 final, Brussels, 21th May, 2012, available at: https://eur-lex.europa.eu/legal-content/BG/TXT/HTML/?uri=CELEX:52012DC0226&from=EN.

[123] *Administrative monitoring report for 2013 for the implementation of the national strategy of the Republic of Bulgaria for integration of the Roma (2012-2020)*, p. 41, available at: https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=726.

[124] *National Strategy of the Republic of Bulgaria for equality, inclusion and participation of the Roma (2021-2030)*, project, available at: https://strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5986.

measures for social reintegration of the persons deprived of liberty, belonging to ethnic minorities or backgrounds of extreme poverty". It remains to be seen, after the official adoption of this strategy, what concrete measures are to be outlined in the action plans for its implementation.

By and large, all the Bulgarian strategic documents since 1999 onwards acknowledge the existence of prejudice, social distancing and discrimination against the Roma in quite a few areas of life. The goals and the measures, which they set out, however, with a single exception, do not concern the areas of criminal justice and execution of punishments. Moreover, the implementation of the provisioned measures remains a serious challenge. All the reforms set out in these documents, to a large extent, remained just good intentions. The observations and the proposed measures keep being repeated from one document into the next, without noticeably affecting the social processes inside the Roma communities, which remain, to this day, excluded and discriminated against in most areas of life.

3. INTERNATIONAL STANDARDS FOR REINTEGRATION AND RESOCIALISATION OF OFFENDERS

For the main part, the international standards for reintegration and resocialisation of offenders belong to the so called "soft law". The terminology adopted by the international documents varies, but usually mentions support for "rehabilitation", "social (re)integration" and less frequently talks about "resocialisation" of convicted offenders. None of the mentioned terms is unequivocal. "Resocialisation" suggests that the person who becomes the object of intervention is originally unsocialised or de-socialised; "rehabilitation" (sometimes translated inaccurately into Bulgarian as "re-education") implies that the person has behavioural and moral deficits and inclination to disproportionate and invasive actions;[125] "social (re)integration" in turn assumes that the person has been disintegrated. Such presumptions are not valid for all people, who for one or another reason have violated the law, and to a great extent stigmatise them.

3.1. UN Standards

Article 10, point 3 of the International Covenant on Civil and Political Rights (ICCPR) requires of member states to establish a prison regime that "shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".[126] This is the only functioning norm of the international human rights treaty law that defines the primary goal of the punishment deprivation of liberty. This norm should put an end to the debates on the matter in the Bulgarian criminal law doctrine pursuant to Art. 5, § 4 from the Constitution of the Republic. In General Comment No. 21 from 1992 the Human Rights Committee states: "No penitentiary system should be only retributory; it should essentially seek the reformation and

[125] See: Snacken, S. and D. Van Zyl Smit, *Principle of European Prison Law and Policy: Penology and Human Rights*, N.Y.: Oxford University Press, 2009, p. 83.

[126] ICCPR, Art. 10, point 3. According to the draft materials, several states have demanded that to be the only purpose of the punishment deprivation of liberty (Novak, M. *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd edition, Kehl, Engel, 2005, p. 253.

social rehabilitation of the prisoner".[127] The Committee invites the states parties to demonstrate in their regular reports whether they have a system to provide assistance after release and to give information on its success.

The UN Standard Minimum Rules for the Treatment of Prisoners (SMR) include more comprehensive norms on the reintegration and resocialisation of prisoners. This is especially true for their last revised version of 2015 ("The Mandela Rules"). According to Rule 4, the purposes of a sentence of imprisonment, to primarily protect society against crime and to reduce recidivism, "[…] can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life."[128] To this end, the competent authorities should offer education, vocational training and work, as well as other forms of assistance. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.[129] According to SMR working with prisoners should not focus on their exclusion from society, on the contrary – their inclusion back into society. Therefore, the institutions working in the community should be called upon to assist the prison staff in fulfilling the task of social rehabilitation of the prisoners.[130] The social and correctional work with the prisoners should have as a goal, for as long as the sentence lasts, to instil in them the will to lead a law-abiding and self-supporting life after their release and to prepare them for it. The treatment should be such as to encourage their self-respect and develop their sense of responsibility.[131] The released prisoners should receive the necessary care, aimed at diminishing the prejudice against them and their social rehabilitation.[132] To these ends, all appropriate means should be used, including religious care, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release .[133] Rule 94 demands that as soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment should be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions. [134]

SMR contain detailed recommendations regarding work in prison. Prisoners should be offered work that actively engages them while at the same time it does not exploit them and ensures safe working conditions. As far as possible, the work provided should maintain or increase the prisoners' ability to earn an honest living after release.[135] The organisation and methods of

[127] HRC, *General comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty)*, Forty fourth session (1992), § 10.

[128] SMR, Rule 4.1.

[129] SMR, Rule 4.2.

[130] SMR, Rule 88.

[131] SMR, Rule 91.

[132] SMR, Rule 90.

[133] SMR, Rule 92.

[134] SMR, Rule 94.

[135] SMR, Rule 98.1.

work in prisons should resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.[136]

Regarding education, SMR insist that all prisoners should be given the opportunity to continue their education. They also recommend that the education of prisoners is integrated with the national educational system so that after their release they may continue their education without difficulty.[137]

SMR contains provisions regarding the care provided to prisoners after their release. Consideration should be given to prisoners from the beginning of their sentence. They should be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation.[138] Once released, services and agencies should ensure that former prisoners are provided with appropriate documents and identification papers, have suitable homes and work and have sufficient means to maintain themselves in the period immediately following their release.[139]

3.2. COUNCIL OF EUROPE STANDARDS

Rehabilitation of offenders, their resocialisation and social integration lie in the core of the penitentiary policies of the Council of Europe since its very establishment.[140] These policies are mainly reflected in the "soft law" acts, but also in some judgments of the European Court of Human Rights regarding conditions of imprisonment. The European Committee for the Prevention of Torture employs a similar approach. Both the ECtHR and the CPT view the matter of resocialisation and reintegration of prisoners through the perspective of their fundamental human rights. In the contracts, on which they base their work, there are no specific provisions guaranteeing positive duties of the state parties to provide measures and activities to support the resocialisation and reintegration of prisoners back into society.

ECtHR attaches special importance to rehabilitation as a purpose of the punishment. On one of its key cases, *Dickson v. the United Kingdom* from 2007, the Court states: "Criminologists have referred to the various functions traditionally assigned to punishment, including retribution, prevention, protection of the public and rehabilitation. However, in recent years there has been a trend towards placing more emphasis on rehabilitation, as demonstrated notably by the Council of Europe's legal instruments. While rehabilitation was recognised as a means of preventing recidivism, more recently and more positively it constitutes rather the idea of re-socialisation through the fostering of personal responsibility".[141] In its case-law, however, ECtHR has struck a balance between the various purposes of the punishment. It is especially progressive when it comes to the access to rehabilitation for life sentenced prisoners. On a number of cases the ECtHR has held that life sentenced prisoners should have access to rehabilitation activities and prospects for release. If access to such activities

[136] SMR, Rule 99.1.

[137] SMR, Rule 104.

[138] SMR, Rule 107.

[139] SMR, Rule 108.1.

[140] See.: Taneva, I. "Why Rehabilitation and Reintegration of Offenders Are Important from a Council of Europe Perspective", *US-China Law Review*, June 2019, Vol. 16, No. 6, p. 259.

[141] ECtHR, *Dickson v. the United Kingdom*, No. 44362/04, Judgment of 4 December 2007, § 28.

is not provided, this constitutes a breach of Article 3 of the European Convention of Human Rights. This entails prisoners are to be placed under an appropriate regime, which would allow them to make progress towards their rehabilitation. Their regime should also prepare them for life in freedom. According to the ECtHR "what may be the primary justification for detention at the start of the sentence may not be so after a lengthy period into the service of the sentence".[142] Life sentences should be subject to review, which would take into account "the progress that the prisoner has made towards rehabilitation, assessing whether such progress has been so significant that continued detention can no longer be justified on legitimate penological grounds".[143]

ECtHR places importance on rehabilitation also in the light of Article 5 of the ECHR when it assesses the proportionality of the indeterminate sentences based on the supposed danger that the prisoner presents with that provision. The Court argued that such sentences can be justified, as long as the prisoners are presented with sufficient opportunities for rehabilitation.[144] The ECtHR has adopted a similar approach regarding the right to family life pursuant to Article 8 of the ECHR. It has argued that maintaining contacts with family during the serving of the sentence is an important means of rehabilitation and reintegration of the prisoner after their release, moreover the restrictions on the right to family life, constitutes a breach of Article 8.[145] The Court, however, does not always adhere to this progressive approach. In another case, it held that in the cases of international transfers of prisoners, the state has an unlimited margin of appreciation on whether to allow a transfer, regardless of which country has requested it, the guarantees it has given for the serving of the sentence and the behaviour of the prisoner.[146] The ECtHR approach regarding the rights of prisoners to education is rather narrow. The Court interprets that right referring to Article 2 of Protocol No. 1 of the ECHR narrowly, as a right to access the available forms of education, but not as a positive duty of the state to provide education for each prisoner for the purpose of his or her resocialisation and reintegration.[147]

The Committee of Ministers of the Council of Europe has adopted a substantial number of documents concerning the situation of prisoners and prison reform. In one of them, Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, we find the definition of the term "rehabilitation". According

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[142] ECtHR, *Vinter and Others v. the United Kingdom*, No. 66069/09 et al., Grand Chamber judgment of 9 July 2013, § 111.

[143] ECtHR, *Hutchinson v. the United Kingdom*, No. 57592/08, Grand Chamber judgment of 17 January 2017, § 43.

[144] ECtHR, *James, Wells and Lee v. the United Kingdom*, No. 25119/09 et al., Judgment of 8 September 2012, § 218.

[145] ECtHR, *Khoroshenko v. Russia*, No. 41418/04, Grand Chamber judgment of 30 June 2015, § 148.

[146] ECtHR, *Palfreeman v. Bulgaria*, No. 59779/14, Decision of 16 May 2017. The author of this study was a procedural representative of the applicant on this case. Here the ECtHR's approach can be described as „state-centred concept of rehabilitation", adopted by the Court of Justice of the European Union (See Mrtufi, A. "The paths of offender rehabilitation and the European dimension of punishment: New challenges for an old ideal?", *Maastricht Journal of European and Comparative Law*, Vol. 25(6), 2018.

[147] See: ECtHR, *Velyo Velev v. Bulgaria*, No. 16032/07, Judgment of 27 May 2014, § 31. The Court justified its narrow approach to the right of education with the „negative formulation" of this right in Article 2 (ECtHR, *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"*, nos. 1474/62 et al., Judgment of 23 July 1968).

to it "rehabilitation is a broad concept, which denotes a wide variety of interventions aimed at promoting desistance and at the restoration of an offender to the status of a law-abiding person".[148]

Out of the whole range of documents adopted by the Council of Europe related to deprivation of liberty in criminal proceedings, the most comprehensive one is the European Prison Rules (EPR), whose latest revision was adopted in 2020. In its Preamble the EPR emphasises that enforcement of custodial sentences should involve offering "meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society".[149] Similarly, one of the leading principles in the management of prisons should be to facilitate the reintegration into free society of persons who have been deprived of their liberty.[150] As regards the duties of prison staff, they cannot be reduced to just guarding, but should "take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance".[151]

Recommendation CM/Rec (2017) 3 of the Committee of Minister to member states on the European Rules on community sanctions and measures require that the implementation of community sanctions and measures should be based on "the development of working relationships between the suspect or the offender, the supervisor and any participating organisations or individuals drawn from the community, focused on reducing re-offending and on social reintegration".[152] Programmes and interventions for rehabilitation should be based on a variety of methods, while the allocation of detainees to specific programmes and interventions is to be guided by explicit criteria.[153] The wider community should be encouraged and invited to participate in all measures aimed at assisting the social inclusion of all suspects and offenders.[154]

The Committee of Ministers has also formulated recommendations on the resocialisation and reintegration of certain categories of prisoners. They are especially comprehensive with respect to juvenile offenders. Recommendation CM/Rec (2008) 11 to member states on the European Rules for juvenile offenders subject to sanctions or measures require that this particular category of prisoners should be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions should foster their physical and mental health, self-respect and sense of

[148] Committee of Ministers, *Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules*, Adopted by the Committee of Ministers on 20 January 2010 at the 1075th meeting of the Ministers' Deputies.

[149] EPR, preamble.

[150] EPR, Rule 6.

[151] EPR, Rule 72.3.

[152] Committee of Ministers, *Recommendation CM/Rec (2017) 3 on the European Rules on community sanctions and measures*, Adopted by the Committee of Ministers on 22 March 2017, at the 1282nd meeting of the Ministers' Deputies, § 31.

[153] *Ibid*., § 38.

[154] *Ibid*., § 50, 51.

responsibility and develop attitudes and skills that will prevent them from re-offending.[155] Rules 59.3 and 96 put a condition for the transfer of persons who have reached the age of majority while serving their sentences in institutions for juvenile offenders depending on whether their social reintegration can be carried out more effectively in the original institution, they could be allowed to stay there.[156] Rule 77 enlists the regime activities, which should be offered to the juvenile prisoners in support of their education, personal and social development, vocational training and preparation for release. These activities may include: schooling, vocational training, work and occupational therapy, citizenship training, social skills and competence training, aggression-management, addiction therapy, individual and group therapy, physical education and sport, tertiary or further education, debt regulation, programmes of restorative justice and making reparation for the offence, creative leisure time activities and hobbies, activities outside the institution in the community, day leave and other forms of leave, preparation for release and aftercare.[157]

Another category of prisoners, on which the Committee of Ministers has formulated recommendations regarding their resocialisation and social integration, are foreign prisoners. These are mainly elaborated on in Recommendation CM/Rec (2012)12 concerning foreign prisoners. One of the main principles, defined in that document, is related to the regime. It should "accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration".[158] The hardship and obstacles to social reintegration of foreign offenders, as well as the impact upon relations with their families, should be taken into account when considering their sentences.[159] Special attention should be paid to the preparation of their release in terms of their specific needs and with focus on facilitating their reintegration into society. In particular, preparations should begin in good time before release regarding determining their legal status; they should be granted prison leave and other forms of temporary release, as well as assistance in re-establishing contact with family, friends and relevant support agencies.[160]

The Committee of Ministers has also formulated recommendations concerning the resocialisation and social integration of certain categories of "difficult" prisoners. Thus, in Recommendation CM/Rec (2014)3 concerning dangerous offenders the Committee recommends that the risk-management of this category of prisoners is carried out with the long-term goal of their safe reintegration into the community via a staged process of rehabilitation through appropriate intervention.[161] In what regards the life sentenced and other long-term prisoners, the Committee of Ministers recommends that the preparation for their release commences well in advance, while taking into consideration the need to design individual plans for before and after their release, which address specific risks and needs;

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[155] Committee of Ministers, *Recommendation CM/Rec (2008) 11 to member states on the European Rules for juvenile offenders subject to sanctions or measures*, Adopted by the Committee of Ministers on 5 November 2008, at the 1040th meeting of the Ministers' Deputies, § 50.1.

[156] *Ibid*., § 59.3.

[157] *Ibid*., § 77.

[158] Committee of Ministers, *Recommendation CM/Rec (2012)12 concerning foreign prisoners*, Adopted by the Committee of Ministers on 10 October 2012, at the 1152nd meeting of the Ministers' Deputies, § 9.

[159] *Ibid*., § 14.3.

[160] *Ibid*., § 35.1, 35.2, 35.3.

[161] Committee of Ministers, *Recommendation CM/Rec (2014)3 concerning dangerous offenders*, Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies, § 6.

consideration of the possibility of achieving release and the continuation of any programmes or interventions undertaken by prisoners during detention; the need to achieve close collaboration between the prison administration and post-release supervising authorities, social and medical services .[162]

The Committee of Ministers also attaches importance to the duties of the prison administration and staff regarding the resocialisation and reintegration of prisoners by elaborating on them in the European Code of Ethics for Prison Staff. Among the main goals defined in it is work towards the social reintegration of prisoners after release by providing them with the opportunity to use their time in prison positively.[163] Similarly, § 22 from the Coded requires from prison staff to work towards "facilitating the social reintegration of prisoners through a programme of constructive activities, individual interaction and assistance".[164]

CONCLUSION

During the years of democratic transition, the Bulgarian legislation and practices have adopted to a large extent the international standards for resocialisation and social integration of the prisoners. Bulgaria turned its back to the one-sided approach from the period of the totalitarian regime focused on the exceptional role of labour in the rehabilitation of prisoners. An awareness was formed and opportunities were created for a holistic approach towards the resocialisation and social integration of offenders through organising a variety of programmes and interventions inside prison institutions. Outside of the prisons, this approach was restricted to the persons who serve sentences while being subject of surveillance in their communities, or those released on parole, who are subject of similar measures.

When it comes to adapting the programmes and interventions to the ethnocultural specifics and the way of life of the ethnic minorities, the Roma in particular, at best that has been a subject of discussion within the doctrine, but is hardly implemented in practice. The primary strategic documents on the integration of the Roma acknowledge the discrimination they are subjected to in the Bulgarian society, however no concrete measures have been set for combatting discrimination in the areas of criminal justice and execution of punishments.

[162] Committee of Ministers, *Recommendation Rec (2003)23 on the management by prison administrations of life sentence and other long-term prisoners*, Adopted by the Committee of Ministers on 9 October 2003, at the 855th meeting of the Ministers' Deputies, § 33.

[163] Committee of Ministers, *Recommendation CM/Rec (2012)5 on the European Code of Ethics for Prison Staff*, adopted by the Committee of Ministers on 12 April 2012, at the 1140th meeting of the Ministers' Deputies, § 1.

[164] *Ibid*., § 22.