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Introduction

Amnesty International is concerned about the grave lack of respect for basic human rights of people with mental health disorders or developmental disabilities (hereafter referred to as people with mental disabilities) in Bulgaria. Some of their basic rights are systematically violated when being subjected to treatment against their will in psychiatric hospitals, or when placed for residential care in social care homes for children or adults with mental disabilities.

Over the years Amnesty International has been concerned about those who have been arbitrarily deprived of their liberty and about the conditions of confinement of anyone deprived of their liberty when these amount to torture or to cruel, inhuman or degrading treatment or punishment. This concerned people in police custody or those who have been sentenced to terms of imprisonment. It also concerned asylum-seekers who are held in detention facilities pending a state authority's decision on their applications or deportation to another country. In this report Amnesty International is focusing on the basic rights of people with mental disabilities[1] placed for involuntary treatment in psychiatric hospitals or involuntarily confined to receive care in institutions, administered within a social welfare system, such as the social care homes for children and adults with mental disabilities in Bulgaria.

Everyone is entitled to certain fundamental rights. The 30 Articles of the Universal Declaration of Human Rights apply equally to everyone, regardless of where they live, of their color or religion, whether they are rich or poor, and regardless of any disabilities that they may have to cope with. Regrettably, good health and the ability to enjoy life without any physical, mental and/or sensory impairments, are not universally shared. Nevertheless, certain fundamental rights are inalienable and no one should be denied their dignity and worth as a human being. Governments must protect a person's right to life or the right not to be subjected to cruel, inhuman or degrading treatment or punishment; the right to equal protection of the law; the right not to be deprived arbitrarily of their liberty or their right to a fair trial; the right to social security or the right to education. Principle 1(5) of the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (hereafter referred to as MI Principles)[2] reminds us that: "Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and in other relevant instruments…"

In October 2001 and January 2002 representatives of Amnesty International, the Bulgarian Helsinki Committee (BHC) and Mental Disability Rights International (MDRI) visited three types of institutions. Firstly, the delegation visited three state psychiatric hospitals in Karlukovo, Patalenitsa and Kardzali, all of which are under the authority of the Ministry of Health and receive their funding from the state budget. The focus of these

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[1] Standard rules on the Equalization of Opportunities for Persons with Disabilities adopted by the UN General Assembly in 1993 (A/RES/48/96) gives the following definition of disability: "The term 'disability' summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature". Amnesty International uses the term "persons with disabilities" in accordance with contemporary UN usage. See i.e. UN Committee on Economic, Social and Cultural Rights, General Comment no. 5, "Persons with Disabilities"; 11th Session (1994), cited in UN DOC. HRI/GEN/1/REV.5 at paragraphs 3 and 4.

[2] Adopted by the General Assembly Resolution number 46/119 of 18 February 1992.

visits was on patients who had been placed there for "compulsory psychiatric treatment"[3]: the legal provisions and procedures to which they were subjected when deprived of their liberty, their living conditions and the treatment administered. The second category of the institutions visited concerned social care homes for children with mental disabilities. Five such homes in Borislav, Dzhurkovo, Strazha, Mogilino and Vidrare were visited. The third category comprised social care homes for adults. The delegation visited eight such institutions in Sanadinovo, Radovets, Razdol, Pastra, Podgumer, Dragash Voyvoda, Samuil and Cherni Vrh. Some of the adults placed in these homes, which provide indefinite residential care, were brought up in social care homes for children. Others have been placed in these institutions by their legal guardians, usually after having been placed in psychiatric hospitals for compulsory treatment. Both categories of social care homes are under the authority of the Ministry of Labour and Social Policy. Experts on the delegation included psychiatrists, one of whom was a specialist in learning disabilities, mental disability law attorneys, a clinical psychologist, a forensic physician and a specialist in psychiatric health care administration and system reform. An Amnesty International and BHC delegation returned to Dragash Voyvoda in April 2002.[4]

Amnesty International highly appreciates the cooperation of the Bulgarian authorities, the administration and staff of the institutions visited, who allowed the delegation to inspect the institutions and, in most places, provided comprehensive information concerning all aspects of the residents' lives and the operation of the establishment. In the course of the visits Amnesty International's representatives met many administrators, professionals and other staff who appeared genuinely committed to provide the best possible care to the people in their institutions, given the limitations of their training and available resources. Their determination to improve the situation is commendable and warrants full support.

The field visits uncovered a range of issues concerning the grave violations of basic human rights of people who are placed in psychiatric institutions for compulsory treatment as well as the basic human rights of children and adults with mental disabilities who are placed in social care homes. These issues span a broad number of concerns from legal provisions and practices regarding compulsory treatment in psychiatric hospitals which result in arbitrary detention and violations of fair trial rights, to lack of rehabilitation for mentally disabled children, to living conditions and treatment available in social homes for adults. The latter were in a shocking state and conditions and treatment of residents in seven of the eight social homes visited, in the delegation's view, were considered to amount to cruel, inhuman and degrading treatment in contravention of international law. Similarly, the reported ill-treatment of patients in hospitals and of residents in social care homes, the observed methods of restraint and enforcement of seclusion, and the lack of adequate rehabilitation or adequate medical care found in social care homes would also amount to violations of Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which prohibit torture or inhuman or degrading treatment or punishment. Bulgaria has ratified both of these treaties and is bound to enforce them fully.

Many of the violations of basic human rights described in this report arise from legal regulations and procedures which are not in line with international standards, or from the observed, widespread practices, such as the enforcement of seclusion or lack of rehabilitation and active therapy. Such violations also result from systematic discrimination against people with mental disabilities, who are left with little chance of enjoying their basic human rights. Bulgaria has failed in its obligation under the ICCPR and other treaties to respect and

[3] "Compulsory psychiatric treatment" in Bulgaria is the legal term used for placements carried out under the civil law procedure. "Involuntary psychiatric treatment" in Bulgaria is the legal term for placements under criminal law procedure. The focus of this report is on the first category.

[4] This report is based on the above mentioned visits. Amnesty International and BHC representatives continue to visit social care homes for children and adults with mental disabilities. In June 2002 they visited Oborishte, Gorni Chiflik, Fakia and revisited Radovets; in July 2002 they visited Kachulka and Tri Kladentsi and revisited Razdol, Samuil and Mogilino.

ensure rights to all its people on an equal basis, and has likewise failed to take the legislative and political measures necessary to give effect to the human rights protections guaranteed by ICCPR.

Amnesty International urges the Bulgarian authorities to effectively and without delay address all these concerns. Improving the appalling situation in most of the visited social care homes for adults with mental disabilities may be a matter of life or death for some residents. Providing children with appropriate treatment and rehabilitation is another urgent task on which the fate of many hundreds of children depends. At the same time, improving the care for mentally disabled children, providing them with adequate rehabilitation and therapy, and including them in mainstream social life by providing them with adequate community-based support would stop many new admissions into the system of adult social care homes. Similarly, improving psychiatric treatment in hospitals and outpatient centres and creating an effective system of community-based support and services for people with mental disabilities would contribute to a decrease in the number of people considered for care in social welfare institutions such as social care homes.

Amnesty International is aware that in June 2001 the Bulgarian government adopted a National Program for the Mental Health of the Citizens of the Republic of Bulgaria 2001 - 2005. The program was critical of the present system of psychiatric care and committed the authorities to its deinstitutionalization. The plan included: "closing down many of the currently existing inpatient facilities devoted entirely to psychiatric care and establishing inpatient facilities in multi-profiled hospitals; providing services within the community and delivering care to the home of the patient; introducing modern medical technologies; creating regional mental health programs and linking them to other elements of the social environment of the mentally ill, as well as to the respect of patients' human rights"[5]. However, this program, elaborated by the Ministry of Health, does not reflect on the situation in the social care homes for children and adults with mental disabilities, which are under the Ministry of Labour and Social Policy and therefore not considered to be part of the mental health care services. Amnesty International's findings and concerns presented in this report underline that the long-overdue comprehensive reform of mental health care services should be further developed to include the social care homes, and implemented with utmost urgency and must ensure Bulgaria's full compliance with international standards.

Once Bulgaria has established a comprehensive reform of mental health care services the international community should provide their full support to such a program.

"The Bulgarian government has a firm political will to deal with the serious situation in social care homes and the first steps have already been taken," stated Christina Christova, Deputy Minister for Labour and Social Policy, at a meeting with Amnesty International's representative in June 2002. She was referring to the closing down of Sanadinovo social care home for women with mental disabilities, following appeals from Amnesty International and other human rights organizations.

This report is divided into two parts. The first deals with psychiatric hospitals visited and the provisions for compulsory psychiatric treatment. The second part, which deals with social care homes visited, is divided into two sections, one for children's institutions and another for institutions caring for adults with mental disabilities. A number of issues, such as living conditions, medical treatment, the use of restraint and seclusion, allegations of ill-treatment and investigations of ill-treatment complaints are discussed in two or three places in this report, with respect to the institutions visited. Although some repetition of international human rights standards is unavoidable full citations of these standards are given at the first point in the report when a specific issue is discussed. The report also contains a summary of Amnesty International's concerns and a list of recommendations to the Bulgarian authorities.

[5] *Inpatient psychiatric care in Bulgaria and human rights*, the Bulgarian Helsinki Committee, Sofia, December 2001.

Finally, it should be noted that this report focuses on violations of civil and political rights of people with mental disabilities. However, the situation depicted here makes it painfully obvious that these rights are interdependent on economic, social and cultural rights such as the rights to an adequate standard of living, the highest attainable standard of physical and mental health, the rights to education and to take part in cultural life[6]. In fact, some of the violations described in this report might concern provisions of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). For example, deliberate denial of adequate medical care to a person deprived of his/her liberty where that denial could result in serious illness, suffering or death, would amount to a breach of Article 7 of ICCPR which prohibits torture or cruel, inhuman or degrading treatment or punishment. Denial of treatment could also represent a breach of Article 12 of ICESCR which sets out the right to enjoyment to the highest attainable level of physical and mental health.

Amnesty International recommends to the Bulgarian authorities:

To publicly acknowledge that the treatment and care of people with mental disabilities in many instances throughout Bulgaria is inadequate and that this situation will no longer be tolerated. Consistent with their commitment under the provisions of ICCPR Article 2, the Bulgarian authorities should undertake all the necessary steps to ensure that people with mental disabilities are not subjected to any form of discrimination. The Bulgarian authorities should also promote public awareness programs which would stress that people with mental disabilities have the same human rights as anyone else in the society.

Part One: Psychiatric hospitals

According to information from the National Health Information Centre, inpatient psychiatric care in Bulgaria in 2000 was available in 11 state psychiatric hospitals with a total of 3,075 beds, 12 psychiatric dispensaries with 1,604 beds, 12 psychiatric wards in general hospitals with 593 beds and nine psychiatric clinics and centres with a total of 896 beds. Therefore, the total number of psychiatric beds in Bulgaria was 6,168, of which 50 per cent were in state psychiatric hospitals. These mental health establishments treated patients for serious conditions who were referred for prolonged treatment. In 2000, a total of 34,754 persons were admitted to inpatient facilities of psychiatric institutions in Bulgaria[7].

The number of patients admitted for 'involuntary'[8] and 'compulsory'[9] treatment to inpatient psychiatric facilities in 2000 was 1,522, or 4.4 per cent of the total number of hospitalized persons. Compulsory treatment, which is the focus of this report, is administered in state psychiatric hospitals and in municipal psychiatric dispensaries, depending on the patients' condition, with the hospitals caring for a larger number of patients.

Having extensively surveyed inpatient psychiatric care in Bulgaria, the BHC reported that the distinction between institutions for active treatment, psychiatric hospitals and dispensaries, and the social care homes for mentally disabled, which are not considered as part of the mental health care services, is sometimes

[6] These rights are embodied in Articles 11, 12, 13 and 15 of the ICESCR.

[7] Ibid.

[8] Bulgarian law differentiates between 'involuntary' and 'compulsory' treatment. Those who are assessed as criminally irresponsible are placed for 'involuntary' inpatient psychiatric treatment according to the provisions of the Criminal Procedure Code. Involuntary treatment is administered at the Lovech Neuropsychiatric Hospital and a special ward in the St. Nahum Specialized Neurological and Psychiatric Hospital in Sofia.

[9] Placement for compulsory treatment is carried out under the Administrative Law Procedure.

vague. In December 2001 the BHC noted that its "researchers met people who were placed in psychiatric hospitals for social rather than medical reasons, and who exhibited no symptoms of a mental illness that needed active treatment. On the other hand, the researchers met some patients in the social care homes who suffered from acute conditions, even some who needed urgent care"[10].

Living conditions

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its Eighth Annual Report [11] elaborated standards for conditions and treatment in psychiatric institutions. The CPT stated:

"The aim should be to offer material conditions which are conducive to the treatment and welfare of patients; in psychiatric terms, a positive therapeutic environment… The quality of patients' living conditions and treatment inevitably depends to a considerable extent on available resources. The CPT recognizes that in times of grave economic difficulties, sacrifices may have to be made, including in health establishments. However, in the light of the facts found during some visits, the Committee wishes to stress that the provision of certain basic necessities of life must always be guaranteed in institutions where the State has persons under its care and/or custody. These include adequate food, heating and clothing as well as - in health establishments - appropriate medication."[12]

Amnesty International's concern:

The living conditions in hospitals visited by Amnesty International's representative were inadequate and did not meet international human rights standards. Although psychotherapy and controlled pharmacotherapy were administered in these hospitals there was a notable lack of other opportunities for rehabilitation and therapy which are considered as essential by international standards.

With regard to the living conditions the CPT required that there was a provision of "sufficient living space per patient as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting hospital hygiene requirements." [13] Furthermore, the decoration of patients' rooms and recreation areas should give patients visual stimulation. Bedside tables and wardrobes were regarded as highly desirable in order to allow patients to keep personal belongings such as photographs or books. The failure to provide patients with lockable space was seen as impinging upon a patient's sense of security and autonomy.

The CPT also recommended that the patients should be suitably dressed "to strengthen their personal identity and self-esteem". Food should be of good quality and served in appropriate conditions. Large capacity dormitories were not considered to be in line with modern psychiatric practices.

The material conditions in the three psychiatric hospitals visited by Amnesty International's representative in October 2001 were generally poor and did not meet the above-noted standards. The buildings, some of which were very old, were in poor state of maintenance and required major refurbishment. The sanitation was inadequate and frequently unhygienic. There were hardly any facilities for daytime activities, much less those which could be considered as adequate. The bedrooms were often large and overcrowded, the walls bare and in poor decorative order. Few patients had night tables or lockers where they could keep personal belongings. "Day-rooms", the term used for areas designated for day-time activities, were often spaces

[10] Inpatient Psychiatric Care in Bulgaria and Human Rights, the Bulgarian Helsinki Committee, Sofia, December 2001.

[11] 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, Ref: CPT/Inf (98) 12[EN], published on 31 August 1998.

[12] Ibid.

[13] Ibid.

provisionally arranged in corridors, furnished with a television set, a table and a few chairs or benches. Special wards for patients who had been placed there for compulsory treatment were locked and guarded by orderlies. In such wards, visited by Amnesty International's representative, the patients were not allowed to leave these wards at any time.

The Karlukovo hospital's most recent accreditation assessment by the Ministry of Health took place in 1998, at which time no recommendations were made. At the time of our visit, in October 2001, the management's main concern was insufficient funding for the hospital. Dr Kapka Nikiforova, the director of the hospital which is 100 years old and the second oldest such institution in the country, explained: "The allocated resources for medication and food are hardly sufficient. We receive no funds for the maintenance of the facilities. Generally, we receive 50 per cent of what we actually need". The hospital had a capacity to treat 250 patients. The average length of treatment for those on compulsory treatment was 90 days - 180 days. The hospital would not be able to function without the support from the Bulgarian Red Cross and other humanitarian organizations.

In the three hospitals visited hot water was generally not available 24 hours a day except in some wards for female patients. One of the hospitals, in Patalenitsa, situated at the foot of the Rodopi mountains, did not have adequate heating. This hospital cared for 100 male and 50 female patients. About 75,000 leva (US$35,000) were required for the completion of a central heating system. In the meantime, electric heaters were being used in dormitories. In January 2002, Dr Dora Atanasova, the hospital director, told Amnesty International's representative that the situation deteriorated with the onset of winter. She stated: "We are lucky if the temperature in the patients' rooms reaches 14 or 15 degrees Celsius." Although there were many electric heaters, some brought in by the patients themselves, they could not all be used simultaneously as that would cause a breakdown of the power system. The electricity bill for December 2001 was 4,000 leva (US$ 2,000), a considerable burden on the meagre hospital budget. The director was happy that she was able to obtain, free of charge, thick overcoats from the Pazardzik police academy for all patients.

'atients in closed male ward in Karlukovo © MDRI

Treatment

The CPT standards require that psychiatric treatment should be based on individual approach and involve a wide range of rehabilitative and therapeutic activities, including, *inter alia*, access to occupational therapy, group therapy, individual psychotherapy, art, drama, music and sports. Patients should have regular access to suitably-equipped recreation rooms and have the possibility to take outdoor exercise on a daily basis; it is also desirable for them to be offered education and suitable work[14].

Amnesty International recommends to the Bulgarian authorities:

To establish standards for inpatient living conditions and the full range of therapies to be provided to patients, which would be consistent with international standards. To ensure that these standards are maintained in all institutions providing inpatient psychiatric treatment.

Principle 14 of the MI Principles specifically lists the following resources which should be available in mental health facilities:

"a) Qualified medical and other appropriate professional staff in sufficient numbers and adequate space to provide each patient with privacy and a program of appropriate and active therapy;

b) Diagnostic and therapeutic equipment for the patient;

c) Appropriate professional care; and

d) Adequate, regular and comprehensive treatment, including supplies of medication."

Rule 3 of the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities states that: "States should ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning".

Apart from psychotherapy and pharmacotherapy, which were not subjected to scrutiny by the delegation in the course of hospital visits (except for the use of electroconvulsive therapy), there was a notable lack of other opportunities for rehabilitation and therapy in the psychiatric hospitals visited. In one of them the gym had not been in use for a long time and occupational therapy had also been discontinued. Apparently, it was no longer possible to sell goods produced in the hospital workshops. In another hospital, the representative of Amnesty International was told that the only therapy for patients on compulsory treatment was "morning aerobic exercises' conducted in the ward's corridor. Generally the patients on compulsory treatment were not allowed outside, even for a short period. Without any activity the patient's days lacked purpose, and with reading material such as newspapers and magazines scarce, television provided the only diversion.

The purpose and effectiveness of treatment were questioned by a director who stated that 70 per cent of the patients return for treatment, on the basis of referrals by outpatient units. Lack of a system of adequate community support and services for people with mental disabilities contributed to such a high re-admission rate and undermined the effectiveness of psychiatric hospital treatment. Many other patients were readmitted because their guardians reportedly could not place them in social care homes, for which there were waiting lists.

Electroconvulsive therapy

Electroconvulsive therapy (ECT) is a treatment whereby a controlled electric current is passed through the brain. ECT is a rapid treatment for severe depressive disorders. Nowadays it is used mainly when doctors consider it is essential to bring about improvement quickly, such as in a high risk of suicide, depressive stupor, or the depressed patient is not drinking enough fluid to maintain kidney function. With modern pharmacology the use of ECT has greatly diminished.

[14] 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, Ref: CPT/Inf (98) 12[EN], published on 31 August 1998.

The electric current induces a generalized seizure which, if uncontrolled, can lead to fractures, including vertebral ones. The use of muscle relaxants prevents this happening, but the paralyzing effects also stop the functioning of respiratory muscles, so that the patient cannot breathe unaided. For this reason ECT must only be given with a general anaesthetic and a muscle relaxant, under the supervision of an anaesthetist. This is known as "modified ECT".

Amnesty International's concern:

Electroconvulsive therapy was administered in some institutions in its unmodified form (i.e. without the use of anaesthetic or muscle relaxant) which is regarded as poor practice by medical experts and contrary to international standards.

The CPT noted that the administration of ECT must be accompanied by appropriate safeguards. The CPT was "particularly concerned when it encounters the administration of ECT in its unmodified form (i.e. without anaesthetic and muscle relaxants); this method can no longer be considered as acceptable in modern psychiatric practice. Apart from the risk of fractures and other untoward medical consequences, the process as such is degrading for both the patients and the staff concerned. Consequently, ECT should always be administered in a modified form"[15].

During its first visit to Bulgaria in March-April 1995 the CPT found that psychiatric hospitals in Lovech and Radnevo used ECT in its unmodified form, and recommended the immediate termination of this practice[16]. However, the recommendation was apparently not implemented and the BHC reported that its researchers found unmodified ECT to have been administered in eight psychiatric institutions (hospitals or dispensaries).

Prior to our visit in October 2001, the Kardzali psychiatric hospital was one of the institutions where unmodified ECT had reportedly been practiced. The hospital had three ECT machines and planned to use them with modification only for cases of catatonic stupor and profound depressive stupor. After being pressed on when the contract with the anaesthetist who was to assist in the administration of modified ECT had been concluded, Dr Damyan Getev, the director, stated that the arrangement came into force on 1 October 2001, namely two days earlier. The psychiatric hospital in Patalenitsa had also administered ECT without the use of muscle relaxants or anaesthetics.

At a round table discussion on Inpatient Psychiatric Care and Human Rights organized by the BHC in Sofia on 18 January 2002, officials of the Bulgarian Psychiatric Association and representatives of the Ministry of Health failed to explicitly condemn the use of ECT in the absence of muscle relaxants or anaesthesia.

Amnesty International recommends to the Bulgarian authorities:

To establish regulations which would ensure that, following medical recommendation, electroconvulsive therapy is administered only in its modified form, in a way which meets international standards for best practice and in circumstances which would not be degrading to the patients and medical staff.

15 Ibid.

16 Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 March to 7 April 1995, para. 185-187, CPT/Inf (97)1.

Free and informed consent to treatment

Amnesty International's concern:

Hospital procedures for seeking and obtaining informed consent from patients placed for compulsory inpatient hospital treatment were inadequate and did not meet international standards.

An important safeguard to protect the well-being of patients in compulsory psychiatric treatment concerns free and informed consent to treatment. The CPT recommended that "every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances. Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed; to describe ECT as 'sleep therapy' is an example of less than full and accurate information about the treatment concerned. Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment."[17] Principle 11 of the MI Principles also defines substantive and procedural provisions on free and informed consent to treatment.[18]

The BHC survey established the inadequacy of the procedures for seeking and obtaining informed consent from patients who were undergoing inpatient psychiatric treatment on voluntary basis. Informed consent most frequently consisted of the patient signing a simple form stating that he/she agreed to the treatment in a given hospital or dispensary. "Even in renowned psychiatric establishments, such as for example the Medical Academy in Sofia, the BHC sometimes found that parents and in-laws, who are neither legal guardians nor wardens of the patients, give consent for the treatment of patients who are not legally incapacitated." In several instances BHC researchers discovered the same practice for obtaining consent even for ECT.

Amnesty International recommends to the Bulgarian authorities:

To establish regulations which would ensure that patients placed for compulsory inpatient hospital treatment are informed of their rights and that they can effectively exercise their right to free and informed consent to medication in a manner which would be consistent with international standards.

Staff

The CPT's general recommendations stressed the importance of staff resources. The visited hospitals which were located far from the nearest urban centres such as Karlukovo and Patalenitsa had problems recruiting adequately trained, particularly non-medical, staff. It was also difficult to recruit adequately trained staff given the low levels of remuneration offered. And there were other drawbacks for recruitment due to the remoteness of the location. Patalenitsa hospital is four kilometres from the nearest village where public transport stops when weather conditions in winter become difficult. On 18 January 2002 Amnesty International's representative was informed by the hospital director that public transport had stopped bringing supplies and staff to the hospital on 19 December 2001. The hospital van could not adequately replace public transport services and some staff had to find their own means or walk. The salaries of the staff were low. A doctor earned 250 leva (US$ 125) a month, orderlies 90 leva, and the monthly cost of travel, not covered by travel allowance, was 16 leva.

[17] 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, Ref: CPT/Inf (98) 12[EN], published on 31 August 1998.

[18] MI Principles sets the standards for consent to treatment in Principle 11.

Moreover, working conditions for the hospital staff, from the director to the orderlies, were difficult. One hospital director complained about the lack of support and recognition for young professionals, like himself, who wanted to change the situation. Such people had no support from state structures, very little from their professional association and even less from within the institution. The director told Amnesty International's representative that both medical and non-medical staff were "experienced" and set in their ways, unwilling to learn. Introduction of new knowledge and practices was resisted and perceived as disempowering the staff *vis-à-vis* the patients. Most nursing staff in his hospital had been in service for over 20 years. He said he wanted to train them in management of aggression but they failed to realize that simply getting angry at the patient and controlling difficult behaviour with force was not going to help. He stated that: "Aggression as a means to deal with a problematic situation has a long tradition. Changing attitudes is required at all levels."

Little training was apparently on offer for unqualified staff. A 19-year-old orderly working in the semi-open male ward in Kardzali hospital stated that he had not received any training for his work which involved *inter alia* acute patients in high-risk situations. He was apparently appointed because both his parents worked in the hospital.

Reports of ill-treatment of patients

Amnesty International's concern:

Some patients in compulsory psychiatric treatment complained that they had been roughly, sometimes violently, treated by police officers, before they were admitted into the hospital. A number of patients also complained that orderlies, who sometimes exercised security-related tasks, resorted to violence or to excessive force.

As the UN High Commissioner for Human Rights has noted people with mental disabilities are among the most vulnerable to human rights abuses[19]. They are frequently in a position, particularly when placed for compulsory treatment, where they could be subjected to physical and psychological abuse. Abuse amounting to ill-treatment could be perpetrated by law enforcement officers at the time when a person with mental disability was deprived of liberty and/or placed in police custody, as well as by non-medical staff in institutions where he/she may be placed for observation and/or treatment. Frequently their psychological and somatic conditions render them unable to complain or to adequately articulate their complaints. Most patients on compulsory treatment would also have very little contact with the outside community and therefore limited possibility to meet anyone willing to convey their complaints to the appropriate authorities. Some hospitals are never visited by the local prosecutor who has a statutory obligation to supervise conditions and treatment of people in involuntary confinement. Even if complaints are filed they are unlikely to be effectively considered since they will be seen as incredible.

Many patients interviewed in wards for compulsory psychiatric treatment complained that they had been roughly, sometimes violently, treated by police officers before they were admitted into the hospital. In Karlukovo hospital Amnesty International's representative spoke with a 22-year-old man, with a history of compulsory treatments, who was brought to the hospital by police officers on 15 July 2001 having reportedly "engaged in a fight". After he was handcuffed the officers allegedly kicked him all over the body and hit him in the head. He had complained at the time of admission but the injuries that he may have suffered as a result of the beating were reportedly not properly examined and recorded in his medical file.

A director of a psychiatric hospital who wished to remain anonymous[20] told Amnesty International's representative that not infrequently police officers would bring patients who had physical injuries, such as

19. See Report of the UN High Commissioner for Human Rights to the Economic and Social Council, UN DOC. NO. E/2001/64 AT PARA 48. ("Because of their physical or mental limitations persons with disabilities are frequently more at risk of having their rights violated and denied.")

20 In addition to the directors of the hospitals visited Amnesty International's representative spoke with a number of other psychiatric hospital directors in Sofia in January 2002.

bruises and lesions, which could have resulted from physical violence. "All that I can do is to describe these in the patient's medical file", stated the director who did not think it would be useful to pass such information for investigation to competent authorities. The director believed that the officer's explanation that force had been required in order to restrain a violent patient would be considered as more credible than the patient's allegations.

A psychiatrist working in a hospital close to Sofia confirmed to Amnesty International's representative that the overbearing conduct of orderlies, who lack any kind of training, demonstrated to the patients that they are at the bottom in the hierarchy of power. He stated that some orderlies in this hospital abused alcohol and were violent with patients. The psychiatrist described an incident of such overbearing conduct when he happened to find several orderlies in the patient's "day-room" watching television. He stated: "They had prepared some food and drinks and were enjoying themselves. As I saw no patients in the room I asked if they were forbidden to watch TV and was told 'No, of course not. They are simply not interested'."

A number of patients also complained that orderlies, who sometimes exercised security-related tasks, resorted to excessive force. Such conduct often results from lack of training in management of violent behaviour or behaviour of patients considered as burdensome and the orderlies' perception that use or threat of force are the only effective means available to deal with awkward situations. This is often compounded by the orderlies' feelings of frustration that wards are insufficiently staffed.

Amnesty International recommends to the Bulgarian authorities:

To require medical examination of all patients in compulsory psychiatric treatment on their admission and to refer reports of any injuries observed, including any relevant statement made by the person concerned and the doctor's conclusions, to the public prosecutor in charge. To assist any patient claiming that they had been subjected to police ill-treatment during their admission into hospital to file complaints to the public prosecutor.

Linked to the insufficient level of staff and poor management of difficult behaviour is the risk that some patients can be exposed to acts of violence by other patients.

A number of other concerns very closely related to ill-treatment are discussed below under the heading of seclusion and restraint or in reference to complaints procedures, contact with the outside world, and systems for external supervision.

Means of restraint and the use of seclusion

It is recognized that in any psychiatric establishment, it may be necessary on occasion to restrain violent and/or agitated patients. The means of restraint are of particular concern to the CPT given the potential for abuse and ill-treatment[21]. The CPT requires that there should be a clearly defined policy for the application of restraint. "That policy should make clear that initial attempts to restrain agitated or violent patients should, as far as possible, be non-physical (e.g. verbal instruction) and that where physical restraint is necessary, it should in principle be limited to manual control. Staff in psychiatric establishments should receive training in both non-physical and manual control techniques *vis-à-vis* agitated or

Amnesty International's concern:

Restraint and seclusion practices in psychiatric hospitals were not in line with international standards and in some instances amounted to cruel, inhuman and degrading treatment or punishment. There were no protocols for, nor records kept regarding the use of restraint and seclusion. Seclusion was frequently enforced as a punishment. In some instances, when it concerned patients who were admitted for treatment on a voluntary basis, seclusion amounted to arbitrary deprivation of liberty and detention.

[21] 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, Ref: CPT/Inf (98) 12[EN], published on 31 August 1998.

violent patients. The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to patients and staff."[22] Resort to instruments such as straps or strait-jackets should only be very rare and always be either expressly ordered by a doctor or immediately brought to the attention of a doctor.

With reference to seclusion, namely confinement alone in a room, of violent or otherwise "difficult" patients the CPT noted that this practice, with a long history in psychiatry was being phased out in many countries. Furthermore, the CPT recommended that: "For so long as seclusion remains in use, it should be the subject of a detailed policy spelling out, in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive. Seclusion should never be used as a punishment. Every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) should be recorded in a specific register established for this purpose (as well as in the patient's file). The entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the doctor who ordered or approved it, and an account of any injuries sustained by patients or staff."[23] Similar requirements for the administration of physical restraint or seclusion are set out in Principle 11(11) of the MI Principles[24].

Amnesty International is concerned that the above recommendations are not being adhered to in the hospitals visited. There were no protocols for the circumstances when the use of restraint and seclusion could be enforced and what methods and means would be permitted. There were no special records which detailed the reasons for the use of restraints and seclusion, who authorized this use and its duration. In practice it appeared that restraint and seclusion were used regularly and with prolonged duration rather than only in exceptional circumstances. In Patalenitsa special felt-lined leather belts were used to restrain patients to the beds. The staff also resorted to handcuffs. A patient's hand would be handcuffed to a bed frame leaving the other hand and other limbs unrestrained. The director explained that such restraint was required to prevent patients from breaking windows which are expensive to replace and important given the inadequate heating in the establishment. However, when the BHC representatives revisited the hospital in March 2002 they were told that handcuffs were no longer in use. The hospital did not have a designated, specially equipped seclusion room. According to the director, seclusion and restraint were prescribed by physicians when a patient refused food or medication or exhibited self-aggressive or violent behaviour. Such instances were rare with only two cases in the three months prior to the hospital visit. It was, however, not possible to verify this as no special records on the use of restraint and seclusion were kept.

On the ground floor of the semi-open ward for male patients in Kardzali hospital, Amnesty International's representative asked the director for permission to inspect a room at the end of the corridor which had been padlocked. There were three men there, one of whom had been locked up for 10 days. In the corner of the room was a bucket where the patients relieved themselves. Feris M. told the visitors that he had been locked up after he tried to escape. The nurse in charge of this ward was questioned on whether the medical

[22] Ibid.

[23] Ibid.

[24] Principle 11 (11) states: "Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient or others. It shall not be prolonged beyond the period which is strictly necessary for this purpose. All instances of physical restraint or involuntary seclusion, the reasons for them, and their nature and extent shall be recorded in the patient's medical record. A patient who is restrained or secluded shall be kept under humane conditions and be under the care and close and regular supervision of qualified members of the staff. A personal representative, if any and if relevant, shall be given prompt notice of any physical restraint or involuntary seclusion of the patient."

files of the patients concerned indicated the time when they had been placed in the *izolator* (the local term for a seclusion room), on what grounds and who had ordered or approved this measure. Although the nurse initially claimed that such data was properly recorded it became clear that there was no such record in the patients' medical files nor was there a separate register for the use of seclusion. Amnesty International's representative was shown a small notebook in which, on the first page, several names had been noted in longhand script which appeared to have been done in some haste. Next to Feris M.'s name was written "escape attempted". The Director stated that seclusion would only be prescribed by the doctor, who visited wards daily, but this was not recorded in the patient's medical file.

The acute female ward consisted of two sections: one which was initially presented to the visitors and another, behind a locked steel door. The latter section had three dormitories with many beds - overcrowding was evident. There was also a seclusion room with a metal bed fixed to the cement floor. The bed had a thin, torn mattress. It was wet and had stains of faeces. The MDRI representative then asked the staff present to demonstrate how they would restrain a patient using the bed and another member of the visiting delegation as a model. The orderlies tried to quickly change the mattress and make the bed a bit more presentable but this was not possible. The visitors were then escorted into the room for the orderlies where one of the staff asked: "Shall I go to get the belts?" Her colleague explained that they did not use belts and she brought some sheets, which she apparently thought the visitors would find more acceptable. The staff then fumbled around attempting to use the sheets, demonstrating that that they had little experience in using them to restrain patients, even when they were very cooperative as was the case with the visiting volunteer. Earlier the visitors had been told that belts and chains were not in use in this hospital.

Seclusion in Kardzali hospital appeared to be frequently enforced as punishment for "attempted escapes", including for patients who had in fact been admitted for voluntary treatment. In the "acute male ward" of Kardzali hospital[25] (which is locked and guarded) the *izolator* consisted of several rooms (also locked off from the rest of the ward). Two rooms, to the left of the entrance, each had a bed permanently fixed into the cement floor. Neither of these rooms was occupied at the time of the visit. The third room on the left was a dormitory with six beds occupied by four patients, all dressed in pyjamas. The cell door was kept open so that the patients could go into the corridor where they smoked next to the barred window. There was a toilet on the other side of the corridor but no facilities for bathing. Tefik H. who had been admitted on a voluntary basis on 7 September 2001 had been in seclusion from the beginning of this treatment. His therapy consisted solely of medication. Suleiman O. was reportedly sent to the hospital by relatives after he ran away from home. However, in his hospital file the appropriate form for voluntary admittance had not been signed by him. The nurse explained that his seclusion had been ordered by two physicians but there was no record of this in his file. Orhan I. was admitted for voluntary treatment of schizophrenia on 24 July 2001. Ramadan Y., who is 25 years old, was brought to the hospital by the police on 18 July 2001. However the prosecutor's order was returned to his office "because the patient had agreed to submit himself to voluntary observation"[26].

When questioned about the right of people who were admitted either for voluntary observation or for voluntary treatment to leave the hospital, the director replied that these patients could be discharged only with

[25] Most male patients on compulsory treatment were placed in this ward.

[26] The letter signed by Dr Getev and Dr Krotnev and received by the prosecutor's office on 24 July 2001, stated: "patient's status improved last week and as a result he is here on a voluntary basis and therefore we will not initiate compulsory treatment under Article 36 paragraph 3 of Law on People's Health". The BHC researchers observed a practice of "persuading" patients, placed involuntarily under prosecutor's decrees for psychiatric examination to "accept" voluntary treatment, thereby avoiding the awkward judicial procedure of their placement for compulsory treatment. They established that in some cases doctors resorted to this practice, frustrated by the unpredictability and arbitrariness of legal procedures. Although BHC was unable to establish what kinds of methods were used for "persuasion" there were indications in some cases that the patients had been threatened.

the agreement of the doctors or discharged "against medical advice" in which case the patient should sign an appropriate form. When Amnesty International's representative sought further clarification for the use of seclusion the director replied: "When the patient is a threat to other patients, or threatens to assault the staff, or in cases of self-aggression". None of the patients observed in the acute male ward's *izolator* exhibited such conduct at the time of the visit. The director also explained that the hospital could initiate proceedings for compulsory treatment if they thought it was advisable that the patient should be kept for therapy. In reply to questions about the grounds and the legality of secluding the four patients who were being treated on a voluntary basis who were found in the acute male ward, the director stated: "We do not keep anyone here against their will but we want to make sure that on their release they will go home and be safe."

Amnesty International is concerned that the observed seclusion practices in Kardzali hospital were in violation of international standards regarding the use of seclusion. Furthermore, the observed practices of enforcing seclusion on patients who have voluntarily been admitted for hospital treatment amounts to arbitrary deprivation of liberty and detention which is prohibited under international law[27].

Kardzali: Bucket used by men held in seclusion to relieve themselves © MDRI

Amnesty International recommends to the Bulgarian authorities:

To ensure that restraint and seclusion practices, which should be prescribed or authorized by a doctor, supervised by medical staff and strictly restricted in duration, are in line with international standards, particularly prohibiting the use of seclusion as a punishment. To provide guidelines for all inpatient psychiatric establishments on protocols for and keeping of special records (as well as in the resident's file) concerning the use of restraint and seclusion and to monitor that they are effectively maintained.

[27] Article 9 (1) of ICCPR states *inter alia* that no one shall be subjected to arbitrary arrest or detention. A similar provision is contained in Article 5 (1) of the ECHR.

Compulsory Placement Decisions

Amnesty International's concern:

Legal regulations regarding placement for compulsory psychiatric treatment in Bulgaria did not provide sufficient guarantees of independence and impartiality.

In her report to the Economic and Social Council, the UN High Commissioner for Human Rights stated the following: "Persons with mental disabilities are particularly vulnerable to abuse, including through their unwarranted committal to mental institutions. The Covenant [ICCPR] provides that no one shall be subjected without his or her free consent to medical or scientific experimentation. It also refers to the right to liberty and security of person (Article 9) and to due process guarantees, including the right to defense and the right to be informed of the reasons for one's arrest (Article 14). These provisions are of considerable importance for the protection of persons with mental disabilities, particularly with regard to their right not to be subjected to arbitrary and unnecessary detention."[28]

The CPT recommended that placement for involuntary psychiatric treatment should be decided in a procedure which "should offer guarantees of independence and impartiality as well as of objective medical expertise. As regards, more particularly, involuntary placement of a civil nature, in many countries the decision regarding placement must be taken by a judicial authority (or confirmed by such an authority within a short time-limit), in the light of psychiatric opinions. However, the automatic involvement of a judicial authority in the initial decision on placement is not foreseen in all countries. The Committee of Ministers Recommendation N° R (83) 2 on the legal protection of persons suffering from mental disorder placed as involuntary patients allows for both approaches (albeit setting out special safeguards in the event of the placement decision being entrusted to a non-judicial authority). The Parliamentary Assembly has nevertheless reopened the debate on this subject via its Recommendation 1235 (1994) on psychiatry and human rights, calling for decisions regarding involuntary placement to be taken by a judge. In any event, a person who is involuntarily placed in a psychiatric establishment by a non-judicial authority must have the right to bring proceedings by which the lawfulness of his detention shall be decided speedily by a court."[29]

Placement in psychiatric establishments for compulsory treatment in Bulgaria does not meet the requirements of the international standards. In addition, the procedures for compulsory placement are discriminatory when compared to procedures for involuntary placement under criminal law provisions.[30] Public Health Act provides for compulsory treatment in the following circumstances: "Persons suffering from schizophrenia, paranoia, cyclophrenia, epilepsy, senility... who, due to their illness, are likely to perpetrate crimes constituting a serious danger to society or are dangerous to their relatives or others, or seriously threaten their own health shall be admitted for compulsory treatment in a state or municipal treatment facility under a judicial decree."[31] Following a complaint, the district prosecutor conducts an investigation in the course of

[28] The Report of the UN High Commissioner for Human Rights to the Economic and Social Council, UN DOC. NO. E/2001/64 at para. 54.

[29] 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997, Ref: CPT/Inf (98) 12[EN], published on 31 August 1998.

[30] Article 89 of the Penal Code sets the terms for placement for "involuntary treatment" under the criminal law procedure for "persons who have committed an act dangerous to society in a state of legal insanity, or who have fallen into such a state before the pronouncement of the sentence or in the course of serving the punishment". Before a prosecutor makes an appropriate proposal he is obligated to obtain a medical opinion and to investigate whether the person "presents a danger to society". Under this procedure the participation of a defence lawyer in the court proceedings is mandatory.

[31] Article 36, paragraph 3, of the Public Health Act

which he/she could order a forensic psychiatric examination, which may be carried out on an outpatient[32] or inpatient basis, if the person refuses without good reason to submit to an examination voluntarily. If a person is committed to a facility for inpatient psychiatric examination, his/her stay in the institution may not exceed 30 days, though in certain exceptions it may be extended by up to three months. The prosecutor then petitions the district court to order the placement for compulsory treatment. The court is obliged to consider the proposal within two weeks of receiving it. The person may be brought by compulsion to the court session if he/she refuses to appear voluntarily or the court may hear the person in the treatment facility if his/her condition does not allow him/her to appear in court. He/she has the right to legal defence but it is not obligatory. Every six months the court should review compulsory inpatient treatment and decide whether it should be continued or terminated.

In October 2000, the European Court of Human Rights examined the conformity of the Bulgarian civil law placement provisions with the European Convention on Human Rights and Fundamental Freedoms (ECHR). In the case of *Varbanov v. Bulgaria*[33] the court established a violation under Article 5(1), concerning the lawfulness of the detention in psychiatric facilities[34], and Article 5(4), concerning the right to judicial review of the legality of detention[35]. According to the court's judgment any decision on detention, including committing a person for a psychiatric assessment, made without basing itself on the opinion of a medical expert, is in violation of Article 5(1)(e) of the ECHR, which allows for the detention of persons of unsound mind in accordance with a procedure prescribed by law. Without a medical opinion it could not be claimed that the person detained for psychiatric examination is mentally ill. The Court was of the opinion "that a prior appraisal by a psychiatrist, at least on the basis of the available documentary evidence, was possible and indispensable... In these circumstances, the Court cannot accept that, in the absence of an assessment by a psychiatrist, the views of a prosecutor and a police officer on the applicant's mental health… sufficed to justify an order for his arrest, let alone for his detention for 25 days…"[36]. The Public Health Act which was in force at the time of the applicant's committal did not oblige prosecutors to seek such an appraisal.

Secondly, the European Court found that the Bulgarian legislation in force at the time did not explicitly authorize prosecutors to detain a person for the purpose of examination in a psychiatric establishment. The Court in its decision "reiterates that the expressions 'in accordance with the law' and 'in accordance with a procedure prescribed by law' require that the impugned measure should have a basis in domestic law and also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects". For these reasons the Court ruled a violation of Article 5(1) of the ECHR.

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[32] None of the patients interviewed in the three psychiatric hospitals had been invited by the prosecutor to submit themselves to a psychiatric assessment in an out-patient facility, before they were ordered to undergo assessment for placement on in-patient basis.

[33] *Case of Varbanov v. Bulgaria* (Application no. 31365/96), Judgement, Strasbourg, 5 October 2000.

[34] ECHR Article 5(1)(e) states: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

…

e. the lawful detention of persons for the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;"

[35] ECHR Article 5(4) states: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

[36] Ibid.

Finally, the Court also established that Bulgarian legislation did not conform to the standard of Article 5(4) of the ECHR, which requires that everyone who is detained be entitled to appeal the lawfulness of his/her detention in a court. The Court ruled that both in general and in the concrete case, the possibility of appeal could only be provided in two forms. When a court orders the initial detention, the detainee must be given access to a hearing either in person or through some form of representation. When a non-judicial body orders the initial detention, the detainee must be given the opportunity to appeal the decision before a court. The Public Health Act, however, did not provide for either possibility.

Even while the European Court of Human Rights was hearing this case, the Bulgarian government introduced some amendments to the provisions of Public Health Act concerning medical measures enforced by compulsion. However, the only significant change concerned the powers of the prosecutor to detain a person for inpatient psychiatric assessment[37]. At the time of writing of this report the government has still not addressed two other concerns of the European Court of Human Rights: that the prosecutors were not obliged to seek a medical opinion prior to a patient's placement in an inpatient facility for assessment; and that detention by a prosecutor continued not to be appealable in court. This means that the placement of people for compulsory treatment in Bulgaria has still not been brought into line with ECHR and that the authorities continue to violate basic rights of those placed in psychiatric establishments for such treatment.

Amnesty International considers that all those who are subject to compulsory treatment, or were subjected to this treatment since the decision of the European Court of Human Rights was adopted in October 2000, should have their cases promptly and thoroughly reviewed by a judicial authority, in accordance with ECHR Articles 5(1) and 5(4). Anyone found to be unlawfully detained should be immediately released and should have an enforceable right to compensation in accordance with ECHR Article 5(5).

Amnesty International's concern:

Legal criteria for involuntary psychiatric treatment under the Public Health Act as defined in Article 36(3) – that a person with a mental illness is "likely to perpetrate crimes constituting a serious danger to society or is dangerous to family members or others, or seriously threaten his/her own health" - are so broad and ambiguous that they allow for arbitrary interpretation.

Of equal concern are the criteria for compulsory treatment placement provided in Article 36, paragraph 3, of the Public Health Act which were not reviewed by the European Court of Human Rights. This provision lists types and groups of mental illness from which a person, who is to be placed for compulsory treatment, should suffer. The court should then prove that due to this illness the person is "likely to perpetrate crimes constituting a serious danger to society or is dangerous to family members or others, or seriously threaten his/her own health". This formulation is so broad and ambiguous that it allows for arbitrary interpretation. Firstly, when referring to serious crimes these criteria for placement require proof only of a probable action, without any specification of whether such probability is short or long-term. It is, however, recognized that modern psychiatry is unable to prove a long-term probability of dangerous behaviour[38]. Secondly, the norm does not make clear what kind of danger the mentally ill should constitute to their family members or others. In its survey the BHC, having examined jurisprudence of several courts and observed a number of hearings, concluded that the courts interpret the term 'dangerous' inconsistently. "Above all, many decisions lack any concrete definition of dangerous behaviour, nor do they provide a detailed discussion of the arguments for

[37] Amended Article 61, paragraph 2, of the Public Health Act states: "If the person refuses to undergo psychiatric assessment voluntarily without good reason, the prosecutor shall order that it be conducted by compulsion - on outpatient or inpatient basis."

[38] Brief Amicus Curiae for the American Psychiatric Association in re: *Barefoot v. Estelle*, p. 8-9; *Barefoot v. Estelle*, 463 U.S. 880.

placement for compulsory/involuntary treatment. When concrete facts are considered, some courts see a danger when the patient's actions have genuinely threatened the bodily integrity of another person. Others, however, consider a threat to puncture someone's car tires to be a danger. In another case, partying and playing loud music at home is considered a 'danger'. Whether a certain type of behaviour is dangerous or not is most often assessed by the psychiatric examination. Observations show that in the absence of an accurate definition of 'danger', Bulgarian psychiatry, as well as the Bulgarian judiciary, combine clinical criteria with the values of society in an astonishing way." BHC also observed in a number of cases that past hospitalization seems to significantly increase the possibility of a person's commitment for compulsory treatment. "Another decisive factor is the desire of the next-of-kin to get rid of the patient and his/her ability to do so by using connections among law-enforcement authorities, the prosecutor's office, or the court."

Serious Danger

Yordan S. a patient in the acute ward in Karlukovo described the circumstances of his placement for compulsory treatment. "I was watching on television a football match between Bulgaria and Denmark in June 2001. Afterward I had a few drinks. At around 4am I knocked on the neighbours' door to ask for a cigarette and they called the police. Although I told them that my arm was broken two officers who took me to the police station roughly pushed and pulled me into their car. I was held at the police station for 72 hours during which time an officer brought me to the district psychiatric dispensary. The doctor told the officers that he needed a letter from the prosecutor in order to carry out the examination and I was subsequently released. Five days later I was in a café and one of the officers who had arrested me earlier took me to the station and then to the local accident and emergency unit where a doctor on duty wrote a psychiatric diagnosis. I was kept for 24 hours in the station and then another two days in the regional psychiatric dispensary where they wanted to give me injections which I refused. They called the police and two officers who came held me while a nurse gave me an injection. I was then belted down (legs, hands and waist). Later I managed to unlock one strap and free myself and tried to explain to the staff that this was no way to treat me. The following day I escaped to my village. Five days later I returned to the dispensary to collect my belongings but they said that I should go to the police station. The police then brought me here. I was previously treated 10 years ago. Staying here makes me ill. No one has told me anything about why I have to undergo compulsory treatment. I asked to make a telephone call at my own expense but was not allowed."

Amnesty International recommends to the Bulgarian authorities:

To amend legal regulations regarding placement for compulsory psychiatric treatment and bring these into line with international human rights standards. Procedural norms should be amended to fully take into account the European Court of Human Rights decision in the case *Varbanov vs. Bulgaria*. The substantive norms concerning criteria for placement for compulsory treatment (Public Health Act, Article 36(3)) should be revised to prevent arbitrary detention. Compulsory treatment should not be considered unless it is necessary to prevent **immediate and present** danger to the health or safety of such a person or to protect others. Patients should have the right to seek a second opinion on their treatment.

The enforcement of another provision of the Public Health Act also seriously increases the likelihood that a person with mental disability in Bulgaria could be arbitrarily deprived of liberty. Article 61, paragraph 3, states that "a person admitted to a specialized health establishment for inpatient psychiatric observation may not be detained for more than 30 days". Paragraph 4 of the same law allows for the extension, in exceptional cases, of this period by up to three months. The BHC survey established that the observance of the 30-day term was an exception rather than the rule in the psychiatric establishments[39].

[39] BHC reported that: "In only one of the 34 observed cases for placement under the procedure of Article 36, paragraph 3 of the PHA, had the patient been detained in the inpatient facility for less than the time limit specified in the prosecutor's decree. In five

The BHC survey also noted that some of the administrators of psychiatric establishments were reportedly prepared to discharge their patients when they considered that their placement no longer had legal basis. However, they did not proceed with the discharge because they were reportedly threatened by the responsible prosecutors. The BHC concluded that the main reason for these grave violations of the law was "irresponsible behaviour of judicial authorities, prosecutors' offices and courts, as well as that of the doctors who conduct the psychiatric examinations". In most cases examined by BHC researchers experts submitted psychiatric assessments within the legal time limit, but the prosecutor or courts did not take appropriate actions to schedule the placement hearings. The problem of judicial review of the discharge from compulsory treatment was much the same, although here the BHC noted that the deadlines for submitting psychiatric assessments were not always observed.

These observations were confirmed during the visit to Karlukovo where Amnesty International's representative interviewed a patient in compulsory treatment who had been waiting for five months for a court hearing to decide on his placement. The psychiatric assessment had recommended his discharge as he no longer required hospital treatment. As in other cases, this patient had been placed in Karlukovo on a 30-day order from the prosecutor. At the time the hospital recommended mandatory treatment but three months after his admission the patient's condition improved. However, he could not be discharged before a court hearing reviewed his placement. The staff were even unable to move this patient from the secured "acute" ward to another better furnished building within the hospital where the patients were free to move about the grounds. The hospital had urged with little effect the Sofia court to schedule a hearing in this case.

In the same hospital another irregularity in placement practices was observed. Several days before the visit the hospital admitted a 15-year-old boy who was brought by the police with a prosecutor's order for an assessment. The staff could not refuse his admission although they did not have facilities for the care and treatment of minors. Principle 2 of the MI Principles recommends that "special care should be given within the purpose of these Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors…".

The conduct of trials in placement and discharge hearings was also scrutinized by BHC researchers. They described the observed hearings as "a judicial farce". It was noted that in "several cases, because the committal proceeding took place months after the initial prosecutor's placement decision, the patients appeared to be in a stabilized condition and the experts had to withdraw their conclusions for placement. During the proceedings the *ex officio* lawyers (when there were any) were recruited only minutes before the beginning of the trial from the courthouse corridors through the joint efforts of the prosecutor and the judge. The lawyers either had not read the case file or had perused it quickly in the couple of minutes before the trial. The lawyers most often agreed with what the prosecutor and the experts required and the person who was being committed sometimes did not even realize that the person standing next to him/her had been appointed to defend his/her interests. Although the judicial procedure, in theory, is supposed to be adversary, in practice the psychiatric experts dictated the outcome in the cases surveyed."

cases the person had been kept in the inpatient facility for psychiatric examination without appearing in court for more than 92 days. In one case the prosecutor's decree for placement in an inpatient facility for expertise did not set a time limit. In that particular case, the patient spent several months in an inpatient psychiatric facility unlawfully deprived of his liberty and never lived to see his case for placement go to court - he died while waiting in the facility."

Other legal safeguards

Amnesty International is concerned that other legal safeguards, recommended by the CPT in order to protect people placed in compulsory treatment, are not being implemented in Bulgaria. These include: information about patients' rights, an effective complaints procedure, maintenance of contacts with the outside world and monitoring of psychiatric establishments by an independent outside body[40]. The MI Principles require a patient to be informed as soon as possible after admission, in a language which he/she understands, of his/her rights. If the patient is unable to understand such information, the patient's rights must be communicated to his/her personal representative[41]. The BHC survey noted that there is no legal requirement or established practice in any of the psychiatric establishments visited to inform patients of their rights. The CPT recommended that an introductory brochure setting out the establishment's routine and patient's rights should be issued to each patient on admission.

Amnesty International's concerns:

- lack of any legal requirement or established practice in any of the psychiatric establishments visited to inform patients of their rights;

- contact with the outside world is difficult for most patients in hospitals, such as Karlukovo and Patalenitsa, which are far from the urban centres;

- there were no independent bodies to supervise the conditions and treatment in compulsory psychiatric treatment in Bulgaria or systems for filing and reviewing patients' complaints.

With regard to contacts with the outside world the location of many establishments, such as Karlukovo or Patalenitsa, make it difficult for many patients to maintain contacts with family or third persons. A patient in the acute male ward in Karlukovo complained that he was not allowed to use the telephone. The orderly stated that there was no card-operated telephone on the premises but the patient insisted that he had not been allowed to make a "reversed charges' call for which the use of any telephone would be adequate.

In clear contravention of international standards, there are no independent bodies to supervise the conditions and treatment of people subjected to compulsory psychiatric treatment in Bulgaria or systems for filing and reviewing patients' complaints. As already noted, even the prosecutors, who are mandated to supervise the administration of the decisions for compulsory placement, apparently exercise this function with great irregularity. One director stated that in the 16 months since her appointment no prosecutor had visited the hospital. Principle 14(2) of the MI Principles provides that mental health facilities "shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment and care of patients comply with these Principles".

Part Two: social care homes

"This place is not for human beings. You should close it down. People die here." - R.H., resident of Dragash Voyvoda.

In Bulgaria there is a wide network of social welfare institutions that have been set up to provide residential care for different groups of people whose specific needs cannot, for a number of reasons, be addressed in a family/home environment. The Ministry of Labour and Social Policy administers social care

[40] 8th General Report on the CPT's activities...

[41] Principle 12.

homes for people with mental disabilities, which provide indefinite residential care for this vulnerable group of people.

Social care homes for children with mental disabilities provide care for minors between the ages of three and 18 (although frequently the institutions continue to care for certain young adults who are considered too vulnerable to be transferred to institutions for adults). The placement of children into institutions are frequently based on unscientific diagnosis, not on the level of support which they require. Most children placed into institutions would be assessed before they reach the age of three. Once 'labelled' they are seldom reassessed until the age of 16 when they qualify for a state disability pension. There are 32 social care homes for children with developmental disabilities and 16 day care centres. A special section of this report below is devoted to these institutions.

There are also 50 social care homes which provide indefinite residential care for adults with mental disabilities. Thirteen provide care for elderly with dementia[42]; 25 for adults with developmental disabilities; and 12 for adults with mental health disorders. However, placement in these homes is often arbitrary and most institutions would have a mixture of residents with varying types and degrees of impairment. The largest institution has 240 residents, the smallest around 50. An average social care home would have a capacity for between 80 to 100 adult residents.

State funding for social care homes is grossly inadequate and the situation is particularly difficult for establishments in the less developed municipalities which are unable to supplement resources received from the state budget. Both national and municipal authorities in charge of social assistance apparently expect social care home administrators to solicit donations and support from charitable organizations[43]. This attitude reveals a lack of understanding of the state's obligation in ensuring, by whichever means it deems appropriate, adequate resources for the functioning of state services. Furthermore, administrators of social care homes, who have little, if any, skills in fundraising, may have very different and unequal opportunities to solicit aid. It is also important to note that most institutions are located in economically deprived areas where possibilities for fundraising in the community are practically non-existent.

The pressure to place both children and adults in such institutions comes from the general population, a third of which lives on less than US$1 a day. Traditional, prejudiced attitudes to mental and physical disabilities result in social stigma for people with mental disabilities and their families. In addition there is practically very little community support for families caring for members with mental disabilities. For most municipal authorities social care homes are also a source of employment for the local residents, hence the pressure to keep them running.

Many of the residents of the institutions visited were brought up in state institutions as orphans or were abandoned by their parents who relinquished their parental rights in favour of the state. This is a legacy of a mental health system which provided little community-based support and where the doctors reportedly encouraged such a practice. Others were admitted to the institutions as adults after their legal guardians, and those who supported them, could not, or would not, provide the necessary care. Many of the residents of the institutions visited could live independently in the community if provided with some support and community-based care and assistance. Many would have been able to lead an independent life if they had been adequately rehabilitated and trained in the institutions for children where they had previously resided.

Amnesty International is concerned that lack of adequate treatment and rehabilitation for children impairs their development and the possibility of leading a more meaningful and useful life. Psychiatric and medical care in these institutions, particularly those for adults, is not systematic and is generally inadequate.

42 These institutions were not visited and therefore are not discussed in this report.

43 In April 2002 Amnesty International's representative observed how a head of a municipal service for social assistance was reprimanding a social care home director for not being sufficiently active in soliciting donations.

Living conditions in seven of the eight institutions for adults visited amounted to cruel, inhuman and degrading treatment. In some institutions for adults the level of negligence was such that in conjunction with the substandard living conditions, it may have resulted in the deaths of residents.

Social care homes for children with mental disabilities

Bulgaria as a State Party to the Convention on the Rights of the Child (hereafter referred to as the Children's Convention), is committed to ensure the observance of the following provisions:

"States parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community." (Article 23(1))

"Recognizing the special needs of a disabled child, assistance (to child and those responsible for his or her care)… shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development." (Article 23(3))

The Committee on the Rights of the Child has, when reviewing state party reports, "recommended efforts to avoid committing disabled children to institutions".[44]

Amnesty International's concern:

The placement of children into institutions are frequently based on unscientific diagnoses, not on a genuine assessment of the level of support which they require. Once 'labelled' they are seldom reassessed until the age of 16 when they qualify for a state disability pension. There are no rules, no procedures, no practice which would impose consistent monitoring and reassessment of the diagnosis by teams of specialists.

The basic premise for the existence of social care homes for children with mental disabilities appears to be that "mental retardation" is a medical condition for which there is no treatment or cure. However, this is a crude and non-specific label, which does not attempt to define the nature of the underlying impairment(s) and thus indicate therapeutic directions. The attitude that 'mental retardation' is incurable appears to be confirmed as an official policy by the fact that the Ministry of Labour and Social Policy is responsible for these social care homes. They are not institutionally linked to the health care system.

Children up to the age of three who are orphaned or abandoned are placed into "Homes for Medical-Social Care". Those who have developmental disorders are diagnosed by a psychiatrist at this stage. At the age of three such children are transferred to social care homes with an attached diagnosis of "moderate, severe or profound retardation". This diagnosis is the legal basis for their placement, and there is no mention of developmental needs. Parental contact is mostly lost, and there is little encouragement for it.

At present in Bulgaria the term "mental retardation", although an ICD10[45] diagnosis, is applied crudely and early in life with no apparent intention of treatment (medical, educational or otherwise). It is not a

[44] The Report of the UN High Commissioner for Human Rights to the Economic and Social Council, UN DOC. NO. E/2001/64 at para. 60

[45] *International Classification of Diseases*, 10th edition, the World Health Organization, Geneva. ICD10 provides a tool to enable better diagnosis and prognosis of all known clinical disorders. It is used in epidemiology, and other research. The ICD does not describe treatment or management.

diagnostic route to therapy and development, but simply to segregation and disposal. Once diagnosed, or "labelled', the children in social care homes have little chance of having their diagnoses reassessed. According to the research conducted in this field in the past two years by the BHC some children will remain with the same diagnosis for 10 to 15 years. There are no rules, no procedures, no practice which would impose consistent monitoring and reassessment of the diagnosis by teams of specialists. The changes in diagnosis took place very rarely and incidentally and only in recent years at the initiative of the director or medical staff of the institution or at the suggestion of a non-governmental organization.

In 2000 the BHC reported on serious failings in the diagnosis, monitoring and reassessment of children with mental disabilities, as well as serious failings in specialist activities (correction, rehabilitation, stimulation of children with special needs) in the institutions where they are cared for. There were hardly any staff in these institutions who were qualified to provide such specialized care. In most of the visited institutions the medical staff were unable to give specific information concerning the etiology of the medical conditions of the child and the dynamics of the clinical data on intellectual disability of the child. In principle this should have been noted by the psychiatrists working in regional psychiatric dispensaries and stored with other medical records in the institution caring for a child.

The medical records of the children usually contained very patchy information concerning: the mother's pregnancy, conditions in which the anomaly of the child may have been established, symptoms of the condition. Not in a single case did BHC monitors read information about the methods used in diagnostics (psychometric methods - establishing IQ, biochemical analysis, encephalographic examinations etc.). Only in rare instances was any information given for establishing one of the forms of intellectual disability.

Children described as having "mild retardation" would be advised to attend special schools, established in the community for children with learning difficulties. All others would be placed in social care homes where they were to remain until the age of 18. Some of the children were admitted into these special institutions without having been diagnosed and there were even cases of healthy children who had been placed there for "social reasons" (having been abandoned by parents, or having lived in great deprivation and neglect). Once in the institution the psychiatric examinations were rare and occurred by chance rather than design.

At the age of 16 when they qualify for disability benefits the children are examined, often superficially, to simply have their diagnosis confirmed. Amnesty International has received information that, in some instances, they have been described as suffering from a more severe degree of disability in order to receive the highest possible state pension. The institutions which care for the child, or adult once he/she is transferred to a facility for adults, receive 80 per cent of the benefit payments. Given inadequate funding of the institutions, these payments, albeit not substantial, are very important. At the age of 18 those with more severe disabilities are transferred to institutions for mentally disabled adults. Those with "mild retardation" (who attended special schools) are released into the care of community-based social services. Because such services are unable to provide any significant support, most such young people would be unemployed and homeless and could possibly eventually end up in social care homes for adults[46].

Care International Bulgaria conducted a six-month long study of 12 institutions in 1999. Teams comprising specialists reassessed the diagnosis of the children. They established that in practice no reassessment had taken place over a period of 10 to 15 years.

[46] Amnesty International's representatives spoke with a number of residents in social care homes visited who experienced a similar fate.

Amnesty International recommends to Bulgarian authorities:

To ensure that the placement in all establishments is based on a professional assessment of the child's impairments and the required level of support. To ensure that the child is consistently monitored and regularly reassessed by an appropriate team of specialists. To ensure that all children already placed in social care homes are periodically reassessed and ensure that they are cared for in the most appropriate institution.

There appears to be little if any ministerial supervision of the "education programs" in these social care homes, as the concept of the "ineducability" of children with severe learning disabilities persists in Bulgaria, although for over 30 years in other countries it has been shown not to be true. Fifty-seven institutions are under the responsibility of the Ministry of Labour and Social Policy. These institutions care for over 4,300 children with disabilities between the ages of three and 18. Sixteen of the institutions are day centres with a total capacity of around 500 children who live with their parents. Thirty-two institutions are for children without parental care. There are over 2,100 children in these institutions. Twenty-five of the 32 institutions for children with developmental disabilities are located in small villages, mostly in economically deprived areas.[47]

There is an increasing number of privately-owned institutions, primarily day centres set up by non-governmental organizations. These efforts point to an alternative for children with disabilities. However, the Bulgarian government still has a responsibility to ensure compliance by these private institutions with international standards or the government itself will be responsible for any breaches. The UN Committee on Economic, Social and Cultural Rights has stated in its general comment on persons with disabilities that "while it is appropriate for governments to rely on private, voluntary groups to assist persons with disabilities in various ways, such arrangements can never absolve governments from their duty to ensure full compliance with their obligations under the Covenant [on Economic, Social and Cultural Rights]. As the World Programme of Action concerning Disabled Persons states, 'the ultimate responsibility for remedying the conditions that lead to impairment and for dealing with the consequences of disability rests with governments'." [48]

Living conditions

Amnesty International's concern:

Poor living conditions prevailed in all social homes for children visited. State-allocated resources were reportedly inadequate for even basic maintenance of the facilities, provision of food, heat and clothing.

Until recently living conditions in many of the homes for children with developmental disabilities were so inadequate that they amounted to cruel, inhuman and degrading treatment. In February 1997 Amnesty International expressed its concern to the Bulgarian authorities about the deaths of six children and one 18-year-old from hypothermia and malnutrition in the Dzhurkovo social care home for children with developmental disabilities. At the time more than 80 children in this institution were left for several weeks without adequate food and heating. In 2000, the BHC began to monitor these institutions systematically and report its concerns about circumstances which were in violation of international human rights standards. For example, the conditions in the social care home in Fakia, in the Burgas region, were described by both its administrator and the BHC monitors as life-threatening. These included very low and inadequate food supplies, lack of medication, soap and cleaning substances, inadequate heating and lack of bed linen. In January 2000 two boys who suffered from fever for two weeks were reportedly not provided with adequate medical treatment. Finally, one of the boys was taken to a hospital where he died the following day, while the other boy died a day later, not even having been examined by a doctor. In

[47] The Ministry of Labour and Social Policy is also responsible for nine institutions for "social-educational-professional training" of children with mild mental disabilities. These institutions have boarding facilities for children who are placed in social care homes (and who return there during school holidays) as well as for children whose parents are not able to bring them to the institution on daily basis or care for them during the week.

[48] General Comment no. 5, Eleventh session (1994) at para. 12.

August 2000 in the social care home in Medven, three children died of dysentery while 10 others were treated in hospital with the same diagnosis. An inquiry by BHC monitors established serious deficiencies in maintaining hygiene as well as failings in the administration of the home, municipal and state supervision, and the provisioning of adequate medical services.

Research conducted by the BHC revealed that the state budget for these institutions was so inadequate that food provision could only be kept at a minimum level despite aid and charitable donations. The situation was worse in institutions which were geographically isolated or where the administrators were not as effective or fortunate in soliciting donations.

In 2001 the BHC reported an improvement with regard to the living conditions, food supplies and funding in some of the social care homes. For instance, in Fakia the monthly expenditure for food was increased five-fold; donations from foreign and local charities, particularly assistance for improving the heating and plumbing, had tripled spending. Apparently some of the untrained staff had been dismissed and six new staff members were appointed including an 'educator', social worker and a physiotherapist. However, the municipality had still not carried out its decision, adopted in December 2000, to move the institution to Debelt, a more suitable location[49], and the Ministry of Labour and Social Policy had not adequately exercised its supervision in ensuring the implementation of measures to improve the situation.

In spite of the reported positive developments in 2001, inadequate material conditions were still the greatest concern of the social care home administrators who were interviewed by Amnesty International's representatives in October 2001 and January 2002. Most directors complained that state-allocated resources were inadequate for even basic maintenance of the facilities and that any improvements depended on donations and the work of charitable organizations. Considering that their primary aim was to provide for elemental needs such as food, heating and clothing it is understandable that few had the time (and most of them lacked the skills) to devote to important concerns such as training staff and appropriate rehabilitation for the children in their care. The director of Borislav believed that the most serious problems of the institution which cares for 46 children arose from a chronic lack of resources. The building had not been redecorated in 15 years and at the time of the visit, in October 2001, the home did not have sufficient quantity of pampers and warm winter clothes. Sufficient quantities of food were obtained with special assistance from the municipality and private donations.

Dormitories were overcrowded and in several places bare and in poor decorative condition, lacking any visual stimulation. In Mogilino there were five large dormitories in the main building, one for each group numbering from 10 to 15 children. The walls were bare and in places paint had chipped off. According to Igor Statev, former director of the home who was reportedly dismissed by the municipal authorities because he had complained about the living conditions in the institution, the social care home frequently suffers power cuts during winter, leaving the home without electricity and heating.

All homes visited had central heating but in places it was inadequate, apparently because of faulty installations or reasons of economy of heating fuel. In Vidrare, the dining room was cold at the time of the visit in January 2002 and the staff explained that the heating in that part of the building would only be turned on during meal times which was not sufficient to provide the necessary warmth. The children ate in three shifts, each lasting 20 minutes.

[49] Fakia is a small village 52 kilometres from Burgas, the largest urban center in the region, where it would be possible to recruit qualified staff for the institution. Debelt is only 19 kilometres from Burgas, to which it is linked with better and cheaper public transport, and reportedly has a facility that could provide superior living conditions to those in Fakia. Amnesty International's representative visited Fakia in June 2002 and found the living conditions substandard and wholly inappropriate for the care of 50 children placed there, including 33 with very serious impairments.

A dormitory in Vidrare © AI

The sanitary facilities were very inadequate. In all of the homes visited there was insufficient capacity for regular bathing and the toilets were inadequate, including for toilet training.

Amnesty International recommends to Bulgarian authorities:

To improve living conditions in all social homes for children and bring them into line with international standards. To ensure that sufficient resources are allocated to all establishments for the adequate provision of food, clothing, heating and maintenance of the facilities.

Contact with parents and the community

Amnesty International's concern:

The children's contacts with parents were mostly completely severed and any contacts with the community extremely restricted.

Very few children were visited by parents, most of whom have relinquished their parental rights in favour of the state[50]. Only two of the 92 children held in Mogilino in 2001 had contacts with their parents. Contacts with the community in which the home is based are also rare. In Strazha the institution occupies the third and fourth floor of the school building. However, it has a separate entrance and a yard which is fenced off from the area used by other children. The staff stated that the residents of the village insisted on segregation - but that this attitude was gradually changing and some of the older children were being invited into private homes in the village on special occasions. In Mogilino the children do

[50] All personal files contain parental statements requesting the institutionalization of the child.

not benefit from similar contacts. There, only a few village residents would reportedly visit the facility on religious holidays.

Amnesty International recommends to Bulgarian authorities:

To ensure that any child considered for placement in an institution, maintains links with the family by encouraging and facilitating, wherever possible, close contacts between the parents and their child. To initiate a comprehensive policy which would ensure that children already placed in social care homes develop, to the greatest extent possible, contacts with the community.

According to international standards, children with disabilities should not be isolated or segregated. In 1997, following its special day of general discussion on "The Rights of Children with Disabilities" the Chairperson of the Committee on the Rights of the Child recommended (on behalf of the Committee as a whole) that "states should review and amend laws, affecting disabled children which are not compatible with the principles and provisions of the convention, for example legislation … which compulsorily segregates disabled children in separate institutions for care, treatment or education".[51] At the same time the Committee noted that "states should actively challenge attitudes and practices which discriminate against disabled children and deny them equal opportunities to the rights guaranteed by the Convention, including infanticide, traditional practices prejudicial to health and development, superstition, perception of disability as a tragedy…".[52]

Staffing

Amnesty International's concern:

None of the institutions visited were staffed or attended (even on an irregular basis) by the range of specialists required to conduct an appropriate rehabilitation program for children with developmental disorders.

The World Health Organisation in 1980 defined the essential differences between impairment (reduced ability), disability (loss of ability) and handicap (disadvantage). This illustrates the fact that while the medical profession may have the skills to identify the biological impairments, and sometimes to repair them, the skills to minimize disabilities, both primary and secondary, lie with other professionals, such as therapists, teachers and psychologists. In this field, doctors have been described as "para-educational professionals". If people with developmental disabilities were nevertheless to be recognized as developing people, decisions about their support needs must come from professionals who can identify the various areas of disability and provide the necessary therapeutic and prosthetic inputs. Amnesty International was told that doctors can feel both incompetent and professionally depressed when trying to "treat" mental disabilities, because they have not had the appropriate training to help people acquire skills in living.

None of the institutions visited were staffed or attended (even on an irregular basis) by the range of specialists required to conduct an appropriate rehabilitation program for children with developmental disorders. Generally, special activities for children in homes visited were organized by staff called educators, many of whom had general teaching degrees, and in some cases only secondary education. Only in one home visited, in Strazha, were there "educators" who had some learning disability training. Orderlies were generally residents from the local village and had no training for work with children, much less those with developmental disabilities.

[51] General discussion on "The Rights of Children with disabilities", UN DOC. CRC/C/66, Para 338(D)(III.)
[52] Ibid, para. 338(E).

Medical care

Another serious problem was medical care. With a few exceptions there are no physicians in these institutions. General practitioners were often in towns or villages some distance away from the home. Treatment by specialists, including psychiatrists, rehabilitation and reassessment were not a standard practice. At the time of the visits only a few institutions complied with the Ministry of Health order no. 19/2001 that the disabilities of all children under the age of 16 should be reassessed by the end of 2001.

Amnesty International's concern:

Medical care was inadequate. With few exceptions there were no physicians in these institutions. General practitioners were often far away from the social care home. Treatment by specialists, including psychiatrists, rehabilitation and reassessment, was not a standard practice.

In Strazha, visited in January 2001, the home had most recently been attended by a psychiatrist in March 2000, who reassessed one child from mild to severe retardation. The following diagnosis was observed by the delegates in a child's medical record: "mild oligophrenia - severe form" and "debility - severe form". One 17-year-old boy was grouped with the more disabled yet upon observing the visitors he immediately got up and asked if they had come to take him away. It was not possible to examine his medical file as it had reportedly been sent to the commission which was preparing him for the disability pension assessment. The main book of residents stated his diagnosis as: "*m.l. Down",* which was interpreted by the staff as mild Down's syndrome, and "*Oligophrenia",*[53] an obsolete term still used in Bulgaria to denote below average intellectual or mental development. However, it was clear to the doctor on our delegation that the boy did not suffer from Down's syndrome.

In this institution there were several children who appeared to be autistic, but the nursing staff did not know of the condition. The social worker certainly knew of it but had been taught in her classes at Shumen University that it only occurred in intelligent people.[54] Many of the residents in social care homes for children and adults visited appeared to have classical autism, but their condition was unrecognized, and so their very special needs went unaddressed too.

In Mogilino the general practitioner came from 17km away, while the paediatrician and psychiatrist were in the hospital 30km away, and the children had to be taken to them. The children were reportedly reviewed every year by the general practitioner. In 2001 no child had been re-diagnosed but the director was keen to have all the children reassessed by qualified specialists.

Amnesty International recommends to the Bulgarian authorities:

To ensure that medical care in social care homes for children is adequate and that monitoring and regular assessment by medical specialists is a standard practice.

Medications[55]

In Strazha 23 children were on some kind of psycho-medication, mostly chlorpromazine, but also other antipsychotics, and the reason given was "aggression". One 13-year-old was very underweight but on chlorpromazine 100mgms daily (a reasonable dose for a disturbed adult) and diazepam twice a day for

[53] From the Greek *oligo* (little) and *phren* (mind).

[54] Autistic spectrum disorders are widespread, and severe autism is to be found in all populations with severe learning disabilities. It is characterized by impairments in language, in the ability to relate normally to other people, and impairments in imagination, with stereotypical behaviours, an insistence on "sameness" and rituals.

[55] For background information about psychiatric medication see section on medications in the Social Care Homes for adults on page 52.

aggression. In fact, according to the doctor on our delegation, diazepam can actually "release" aggression. The staff explained that residents over 17 may receive their medication by injection.

In Mogilino there was insufficient time to examine the treatment regime properly but the GP prescribed phenobarbitone for children as it was free or very cheap.[56]

Care for the most seriously affected

The living conditions in Dzhurkovo significantly improved since the winter of 1997 when seven residents died of hunger and cold. At the time of the visit, in October 2001, the playroom on the ground floor had a new floor heating system installed under attractive ceramic tiles. On the floor above there was a well-equipped room for physical rehabilitation and a "sensory room", where children were brought to rest on soft mattresses, to be amused by different light effects projected onto the walls and ceiling and to listen to music.

However, not all children benefited from the facilities. On the first floor two rooms, with five and seven children respectively, provided accommodation for the most severely disabled children. They lay on beds with only plastic sheeting. Some were wet and needed to be changed. In the first room a boy who lay on his back appeared to be in great distress if anyone tried to approach him. There were lots of flies swarming about, many resting on the child's body and face. One orderly on duty stated that these children were never taken out of the room, except occasionally, onto the adjoining terrace. Later, the nurse on duty claimed that these children were daily taken into play rooms downstairs.

In the second room the most seriously ill child was 13-year-old Vera D. Her contorted body was so emaciated that her skin appeared very tightly stretched over her bones. The nurse on duty told us that she had a terminal liver disease and was wasting away even though she was reportedly given large quantities of food. Vera held the visitors' hands and appeared to be very calm and pleased with the attention she was receiving, albeit very briefly. Her underclothes were wet, which the orderly on duty had not promptly detected and changed. From her medical records it was established that Vera D. was suffering from cerebral palsy. There apparently was no diagnosis of learning difficulties and she may in fact have fully understood the circumstances in which she lived but was unable to verbalize any feelings or thoughts. This would have made her condition even more horrible, if that is possible. The nearest hospital was 52km away. Vera D. had been examined by a paediatric specialist in Plovdiv on 21 June 2001. Her diagnosis was: cerebral palsy, *status post hepatitis viralis, dermatitis alergica*. The staff treated Vera D. as if her death was a foregone conclusion and only a matter of time. Even in these very dramatic circumstances Vera D. was apparently not receiving any special attention or care. The medical staff of the home appeared not to be concerned whether their care for Vera was adequate or whether their institution was able to administer adequate medical care for her.

Another child in this room was whiling the time away by tearing small rectangular strips of a cloth rag. The nurse told the visitors "All the pieces she tears off are perfectly identical. I could not do that myself if I tried." When the visitors asked why there were no toys in the children's beds the nurse replied that they were kept downstairs and that children played with them when they were taken to play with the educators, none of whom were on duty in the afternoon. It was not possible to ascertain if in fact any activity was organized for the most severely disabled children given the previously noted statement of an orderly who claimed that they rarely left their beds. All of the 12 children with the most severe disabilities in Dzhurkovo at the time of the visit appeared to be neglected and deprived of adequate care, particularly rehabilitation therapies. The staff, though they may be well-meaning, did not include people who were qualified to care for these children's special needs.

The children in Mogilino had a range of diagnoses, mostly mild or moderate disability, but certainly some with severe and multiple impairments. The children were housed in different buildings, according to physical and not intellectual abilities. Thirty-five children spent their entire lives in bed.

[56] See also "Practices found" in the section on social care homes for adults on page 52 and footnote 86.

The visit to the house which contained the most disabled children was distressing. There were, for example, young children with cerebral palsy, leaving some spastic in all four limbs, one blind and deaf child, and a little one with Down's syndrome who was extremely hypotonic (floppy) with it. All these children were lying horizontally in bed and spent their days perceiving their environment from that position. It was clear that the staff had no idea how to interact with these very impaired children beyond feeding and cleaning them.

Lack of adequate rehabilitation[57]

On the same visit to Dzhurkovo in October 2001, in addition to the neglect of 12 children with greatest disabilities, the lack of adequate rehabilitation was painfully obvious in a large dormitory on the first floor occupied by 12 children with Down's syndrome. The children who were in wooden cots were reportedly five and six years old but their physical development resembled that of one-year-olds. None of them could stand independently, without holding on to the sides of the cot. There were two orderlies in attendance at the time of the visit but there did not seem to be any organized activity for the children. One girl in the cot closest to the door had chewed the top sides of the cot frame which is approximately two centimetres wide on the top and three centimetres wide on the sides. When this was pointed out to the orderly she replied that the cot had been recently repainted with lead-free paint. There was no understanding that the girl had been driven to chew the wood because she lacked attention and means to occupy herself in any other way. Because educators were not on site at the time of the visit it was impossible to obtain information about rehabilitation therapy that these children might be receiving. However, the stage of their development, given their age, indicated that they had been grossly neglected.

Amnesty International's concern:

Depriving children with developmental disabilities in social care homes of thorough assessments, adequate medical care and appropriate rehabilitation amounts to cruel, inhuman and degrading treatment and thus violates international law.

Although the material conditions in Dzhurkovo and other visited institutions may have significantly improved over the years there appeared still to be a serious failing to provide the children with active treatment appropriate for their medical disability.

As already noted rehabilitation of children with developmental disabilities is a complex issue. It requires teaching strategies that are individualized to the person's skills and weaknesses. Such strategies should be based on a comprehensive set of assessments conducted by an interdisciplinary team of trained professionals (such as physical therapists, occupational therapists, speech and language therapists, psychologists and physicians), and should be implemented in a consistent manner by trained staff during all waking hours. Furthermore, these strategies need to be evaluated on a regular basis so that necessary changes can be made based on the person's progress. With all children, including those with Down's syndrome, it is recognized that very early intervention (soon after birth), with a lot of stimulation by and interaction with the parent or caregiver, is essential to development. Children with Down's syndrome in particular are able to make significant intellectual gains. In this context the children of Dzhurkovo were not receiving adequate treatment. The consequences of such neglect will have a profound effect for the rest of their lives.

The new paint and tiles in Dzhurkovo social care home were more attractive, but the situation observed at the time of the visit hardly got to the heart of the matter – the need for active treatment. The children in social homes require continuous learning not just a chance to be brought into a room with toys or to watch flashing lights. The lack of interaction with the carers in Dzhurkovo was especially troubling for the children in the beds

[57] As noted earlier in this report Principle 14 of the MI Principles provides for the resources which should be made available in mental health facilities. Rule 3 of the UN Standard Rules on the Equalization of opportunities for persons with disabilities which states that: "States should ensure the provision of rehabilitation services to persons with disabilities in order for them to reach and sustain their optimum level of independence and functioning."

because there was so little stimulation in the room to start with and the early neglect has resulted in emotional distress, withdrawal, distorted and atrophied limbs. Many of the children in the playroom on the ground floor, who were moving about, had developed a lot of stereotypical behaviour (head banging/slapping, repetitive finger movements, pushing of others, biting of their own hands). The experts on the delegation believe that they behaved in this manner to compensate for the lack of interaction; to get attention; and to provide their own stimulation for lack of anything more meaningful to do. If active and appropriate treatment is not started soon, these children will be permanently and severely affected. They will never be able to achieve the standard recognized by State Parties to the Children's Convention, "that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community" (Article 23). Instead such children will probably be condemned to spend the rest of their lives in social care homes. Most will eventually be transferred to adult facilities, where material conditions are often appalling and rehabilitative treatment practically non-existent.

Amnesty International is concerned that depriving children with developmental disabilities in social care homes of thorough individual assessments, adequate medical care and appropriate rehabilitation amounts to cruel, inhuman and degrading treatment and thus violates international law, including Bulgaria's obligations under the Children's Convention, as well as the ICCPR and the Convention against Torture. The consequences of such neglect can be life-threatening in some instances. Children who have been neglected and deprived of adequate rehabilitation suffer the consequences for the remainder of their lives. Depriving a person of the opportunity to develop his/her potential denies them their fundamental right to life with dignity and respect.

Amnesty International recommends to the Bulgarian authorities:

To ensure that each child with developmental disorders has an individualized rehabilitation and training program; to ensure, as a matter of greatest urgency, that all children already in institutions receive active and appropriate treatment based on individualized assessment of their developmental needs. These objectives can be accomplished only if all institutions caring for children with mental disabilities are staffed by the full complement of required specialists.

Mortality

In Mogilino there was a high mortality rate, with six deaths in 2001[58]. Post-mortem examinations following deaths in this institution have been required since 1999. The stated causes of death included disorders which are common for children with severe developmental disabilities and where there are poor resources. A nine-year-old boy died on 6 November 2001 of pneumonia. He was suffering from cerebral palsy which impeded his swallowing. Children in this condition need to be fed in an upright position. Otherwise food can enter the windpipe and cause pneumonia. When questioned the staff responded that the children were fed only with bottles and that they would be in a reclining position with pillows to prop up their heads.[59]

Allegations of torture and ill-treatment

Allegations of torture and ill-treatment were very rare. This may not necessarily reflect the real situation as many of the children would

Amnesty International's concern:

Although reports of physical abuse of children are very rare Amnesty International is concerned that they are not investigated promptly and impartially and that the investigations do not meet the requirements of the Convention against Torture.

[58] Ninety two children were cared for in this social care home at the time of visit in January 2002.

[59] Amnesty International's representative who visited Mogilino in July 2002 observed that the most severely disabled children were all fed in a reclining position.

not be able to complain. There appeared to be little supervision of the social homes by municipal authorities and practically none by the Ministry of Labour and Social Policy. Still, problems of staff attitudes have been noted. A British charity working on modernizing facilities in some children's homes questioned the children on what they would like most to see changed. Perhaps surprisingly, the children felt that the most crucial change needed was an improvement in staff attitudes, which they rated as more important than better food, heating and clean and functioning bathrooms.

The social care home in Trnava, Veliko Trnovo region, had 24 children in its care in 2001, aged between six and 10 years old and diagnosed with "moderate and severe mental retardation". In August and September 2001 several newspaper reports claimed that an orderly had been ill-treating children in this home. In September 2001 the director confirmed some of the allegations in an interview with the BHC. The orderly who was allegedly responsible for such conduct had been dismissed. However, an internal inquiry had not established any responsibility of the then director for failing to adequately supervise staff conduct. Apparently, no criminal proceedings had been initiated against the dismissed orderly. The BHC examined written statements of the internal inquiry that described how an orderly attempted to forcibly feed a four-year-old boy, whose nappies needed changing, and having failed to feed the boy, then slapped him in the face. On another occasion she tied him down to the bed. In April 2000, possibly unintentionally, she burned another child with scalding water. The boy required hospital treatment and was later transferred to another social care home. Several former colleagues stated that this woman had ill-treated children on numerous occasions, including beating them with a stick and pricking them with needles. Such conduct, given the severity of the suffering involved, and considering that the victims are so young and relatively defenceless, could potentially amount to torture.

The Ministry of Labour and Social Policy set up a commission to inquire into the published allegations of ill-treatment in Trnava. In a letter to BHC dated 19 October 2001, Margarita Mihalcheva, then head of the National Service for Social Assistance, explained the findings of this inquiry. It found that the four-year-old boy who had reportedly been forcibly-fed, slapped and tied to the bed had been hospitalized from 23 January to 3 February 2000 in Byala Slatina with "severe anaemic syndrome". The boy was readmitted to the hospital on 5 March 2000 with high temperature, excessive salivation and bleeding from the mouth. At the time he was accompanied by an educator and an orderly who stated that they suspected that the child had been beaten. Police officers who were in the hospital on an unrelated matter took note of the allegations and investigated the case. This investigation was reportedly suspended for lack of evidence after it was established that the bleeding resulted from an inflammation in the mouth. In the case of the boy who had been scalded with hot water the commission of inquiry reported that on 5 April 2000, the suspected orderly had observed in the course of the morning washing session that the legs of the child appeared to be very red, leading her to suspect that the boy had suffered burns. Dr Kuncheva, a general practitioner based in the village, then referred the boy to the hospital in Byala Slatina where the child was treated from 8 April to 15 April 2000. It remains unclear from the information made available by Margarita Mihalcheva where the child had been treated from 5 to 8 April 2000 and what medical treatment was administered. It also remains unclear whether the commission of inquiry investigated how the morning washing of the injured child had been performed; what had caused the burns; whether an internal inquiry into the incident had taken place and with what results. Apparently, even before this incident, the then director of the social care home had issued a written warning to the orderly "for rough treatment of children". There was no information, however, about the specific conduct for which the orderly had been reprimanded. She was dismissed on 11 July 2000 following a disciplinary procedure but no information was given about the grounds for the dismissal.

Margarita Mihalcheva's letter also referred to a girl described as "a child who is blind and has greatly impaired hearing" who had been placed in seclusion "because of crises which she frequently experienced, making her cry and preventing the other children from sleeping". The ministerial inquiry did not find that there had been prolonged stays of children in the *izolator*, but there was no information on what would be considered prolonged; in what circumstances the *izolator* would be resorted to; and who would authorize its use. The final

statement in the Ministry's letter indicates that the matter should be considered as closed: "The inquiry has concluded that there had been cases of ill-treatment of children in the Home for Children with Mental Disabilities 'Nadejda', village of Trnava. However the information published in the newspaper "Monitor" concerns only cases that took place in the past and for which the responsible staff has been disciplined and dismissed."

Amnesty International is concerned that this inquiry, which should have led to a criminal investigation and possibly prosecution, could not be considered as thorough and impartial and does not meet the requirements of the Convention against Torture. Article 12 states that "each state party shall ensure that its competent authorities proceed to a prompt and impartial investigation" with regard to all acts of cruel, inhuman or degrading treatment or punishment. Furthermore, Amnesty International is concerned that the inquiry conducted by the staff of the Ministry of Labour and Social Policy does not meet the impartiality requirement of the Principles on the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which states that investigators "shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial".[60]

Supervision by National Authorities

The information about the inquiry into allegations of ill-treatment of children in Trnava is an indication of insufficient level of interest of the national authorities to establish all circumstances which led to the ill-treatment of children for whose care the Ministry was responsible. Such an inquiry should also have considered whether it was necessary to issue recommendations to other homes about safeguards that would ensure that similar misconduct is promptly acted upon in the future. Another matter of concern was the Ministry's implicit understanding of what misconduct would constitute a criminal offence and therefore should be investigated by the responsible judicial authorities. The inquiry report into the allegations of ill-treatment of children in Trnava should have at least explained why the matter was not referred to the responsible prosecutor for his consideration. Considering that the ill-treatment allegations had been published, the responsible prosecutor could have initiated an investigation into the allegations *ex officio*.

In fact the failings of the responsible prosecutor to investigate Trnava allegations point to an apparently general attitude of Bulgarian prosecutors when investigating the conduct, which may amount to criminal negligence, of administrators and staff who care for children in institutions. The investigation into the deaths of children in Dzhurkovo in the winter of 1997 was reportedly still in progress at the time of the October 2001 visit. No criminal investigation has apparently been initiated into the deaths of two boys in Fakia in January 2000. No investigations have been initiated into the deaths of children in other homes where the level of apparent negligence may not be so blatantly obvious and where an investigation would require a series of complex examinations by forensic experts (e.g. deaths of severely disabled children that may have been caused by improper feeding practices).

Amnesty International recommends that an independent body should be established to monitor the care provisions in all social care homes for children which would be mandated to investigate any complaints about the situation in the institutions as well as to monitor that the responsible municipal and national authorities are exercising their statutory supervisory function.

[60] Principle 5(a) states the following: "In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, of for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles."

Amnesty International recommends to the Bulgarian authorities:

To set up an independent monitoring mechanism for children in social care homes. This body would maintain an oversight of conditions and care as well as ensure that the responsible municipal and national authorities are exercising their statutory supervisory functions, including their responsibility to promptly and impartially investigate any ill-treatment complaint.

Social Care Homes for Adults with Mental Disabilities

As noted in the introduction to this report, in October 2001, January and April 2002, Amnesty International's representatives visited eight social homes for adults with mental disabilities, revisiting two institutions, in Sanadinovo and Dragash Voyvoda[61]. The conditions in seven of these were impoverished and overcrowded, amounting to cruel, inhuman or degrading treatment which is prohibited by international law[62]. Dr Mary Myers, a consultant psychiatrist who visited these institutions as an Amnesty International representative, stated: "They displayed all the hallmarks of the worst kind of institutionalization. The culture was one of simply controlling and warehousing people. The residents who had obviously been abandoned by society were left with nothing to do and nothing to hope for. They were herded together in the institutions with absolutely no purpose to their days."

Amnesty International considers that the people with mental disabilities in these institutions were excluded from mainstream society on the basis of diagnoses which are questionable, founded on outdated assumptions, and seldom if ever reassessed.

The staff was both severely insufficient in number, and lacking in the professional skills required for their clients' needs. This may be a reflection of the lack of resources as well as the general attitude to the residents of social care homes, illustrated by a statement of a doctor met in the course of our visit: "There is nothing that can be done for their condition."

Appalling living conditions and lack of adequate treatment in social homes for adults with mental disabilities in two of the visited institutions have been the subject of Amnesty International's campaigns[63]. A report on Sanadinovo, published in April 2002, documented the situation in this institution as well as the response of the Bulgarian authorities, particularly the local prosecutors, to appeals concerning grave human rights violations in this social home[64]. In June 2002 Sanadinovo was closed down and most of the women were transferred to a newly refurbished facility in Kachulka. Seven of the women who were placed in Razdol continued to live in appalling conditions. The situation in Dragash Voyvoda was described in a letter from Amnesty International to Nikola Filchev, the General Prosecutor of Bulgaria, published in April 2002. Ghastly living conditions, neglect and abuse of residents prevailed in most other visited institutions[65]. As of mid-July, no reply had been received from the General Prosecutor.

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61 Representatives of Amnesty International and BHC continue to monitor social care homes. In June they visited Oborishte social care home for men with mental disabilities and Gorni Chiflik social care home for women with mental disabilities and revisited Radovets.

62 Living conditions as well as use of seclusion observed in Oborishte in June 2002 also amounted to cruel, inhuman and degrading treatment.

63 See *Bulgaria: Disabled women condemned to "slow death"*, (AI Index EUR 15/002/2001, 10 October 2001) and *Bulgaria: cruel, inhuman and degrading treatment of women inmates of Sanadinovo*, (AI Index: EUR 15/001/2001, 10 October).

64 See *Bulgaria - Sanadinovo: "This is truly a ghastly place"* (AI index EUR 15/002/2002) published in April 2002.

65 See *Bulgaria: Residents of Dragash Voyvoda are dying as a result of gross neglect* (AI index EUR 15/004/2002) published on 15 April 2002.

Razdol social care home for women, January 2002 © AI

Placement in social care homes

Bulgarian officials consider placement in social care homes as "voluntary" as it is based on an application of a family member or a legal guardian (see also the section in this chapter on guardianship)[66]. The same officials claim that placement in social care homes is not comparable to placement for compulsory inpatient psychiatric treatment because social care homes are not considered to be mental health care institutions and their primary function is to accommodate people who have no one able or willing to care for them. In fact, Ordinance number 4 of 16 March 1999, issued by the Ministry of Labour and Social Policy, sets the following criteria for placement: "People with sensory impairments and/or mental disabilities can be placed in social care establishments when in their home environments they cannot be provided with the specific care required by their state of health" (Article 27). Although a person can be placed in a social home only if "all means have been exhausted to allow him/her to stay with the family" (Article 29) the ordinance does not specify what "means" this might entail and how these should be provided for. The ordinance also fails to specify how "specific care required by their state of health" would be administered in a social care home for

Amnesty International's concern:

Substantive and procedural norms for placement in social care homes blatantly fail to meet requirements of international human rights standards and violate the rights to due process and freedom from arbitrary detention.

[66] In extremely few instances a resident, who has not been placed under guardianship, has been admitted at his/her own request. But even in such cases their position in the social care home was hardly different from other residents. For example, although all residents have a right to a leave of up to three months per year, a 'voluntary' resident in Dragash Voyvoda was observed pursuing his long-standing request for a three-day leave with the social care home director. She simply advised the resident that his request would be reviewed "in due course".

adults with mental disabilities, and indeed whether any rehabilitation[67] would be provided. The placement decision is made by the head of the municipal service for social assistance (of the municipality which is responsible for the appropriate social care home) on the basis of a report prepared by this service[68], which assesses the need for placement. As this municipal authority is also responsible for the management of the social care home, which *inter alia* provides employment for local residents, their self-evident interest is in maintaining the facility operating at full capacity. A rejection of the application can be appealed to the head of the district service for social assistance. There is no provision in the ordinance that the person concerned should be represented by a lawyer. This procedure in which the interests of the person concerned are not effectively represented, and the placement decision is not subject to an independent review, does not provide safeguards for due process and protection against arbitrary detention, warranted by international human rights law, the MI Principles and the Council of Europe standards[69].

Amnesty International recommends to the Bulgarian authorities:

To review the placement of all residents of social care homes and ensure their rights to due process and freedom from arbitrary detention have not been violated.

To establish substantive and procedural legislation which would regulate placement in social care homes and ensure that these provisions are in line with international law standards.

Once placed in a social care home the vast majority of residents will spend the rest of their lives there. Ordinance number 4/1999 has no provisions on periodic assessment and review of the placement decision. It only stipulates that placement can terminate at the request of the person concerned, if not incapacitated, or of his/her guardian, or "if a change in psychological and/or physical condition are no longer appropriate for the home's designated profile". Amnesty International is concerned that the vast majority of the people placed in social care homes in Bulgaria have had their basic rights to due process and freedom from arbitrary detention violated and that their placement should be reviewed.

Living conditions

Amnesty International's concern:

The living conditions in seven of the eight social care homes for adults with mental disabilities visited by Amnesty International amounted to inhuman and degrading conditions in violation of international law.

All the facilities visited were not adequate for the purpose of caring for people with special needs and many were not fit for accommodation in any circumstances. To place human beings into such quarters displays disregard for their right to be treated with respect for their human dignity, as mandated by Article 10 of the ICCPR which states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The Human Rights Committee (HRC) has said in its General Comment no. 21 on Article 10 that: "Article 10, para. 1, of the International Covenant on Civil and Political Rights applies to anyone deprived of liberty under the laws and authority of the state who is held in… hospitals – particularly psychiatric hospitals (Para. 2 of General Comment)[70]. Furthermore, the HRC has reminded states in the same General Comment that "respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons" (Para. 3 of General Comment). Finally, in Para. 4 of the same General Comment the HRC noted that: "treating all persons deprived of their liberty with

[67] Envisaged, for example, for homes for children with mental disabilities in Article 49.

[68] The Ministry of Labour and Social Policy issues guidelines for the preparation of these reports.

[69] These standards are comprehensively described in this report under placement for compulsory psychiatric treatment in state hospitals on p 15.

[70] Forty-fourth session, 1992, cited in HRI/GEN/1/REV. 5

humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently the application of this rule, as a minimum, cannot be dependent on the material resources available in the state party. This rule must be applied without distinction of any kind." Principle 2 of the MI Principles states: "All persons with mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person." The failure of the authorities responsible for these establishments to provide for essential elements required for a habitable environment such as shelter, hygiene, sanitation, comfort, food and warmth, in all but one[71] of the visited institutions could be considered to amount to inhuman and degrading treatment and to be in violation of international human rights standards.

It appears that the decision to place most of these institutions in remote locations was a deliberate policy and a reflection of public attitudes to people with disabilities which needs to be urgently addressed. Far from the eyes of society these people are not an unpleasant reminder of society's failure to accept the responsibility to treat all human being as equal and to assist those who are at a disadvantage. The residents are thus excluded from opportunities to share ordinary community experiences. The remoteness also guarantees poor or non-existent levels of good quality professional and technical support to both the residents and the staff. It is clear too that the remoteness means that officials of the Ministry of Labour and Social Policy rarely, if ever, visit.

In fact, the very location of some of the institutions made them unsuitable for long-term residence, particularly in winter months. For example, the social care home in Razdol is in an extremely remote area, at 1,100 metres altitude, three or four kilometres from the Bulgarian-Macedonian border. In January 2002 it took Amnesty International representatives an hour and a half to drive around 20 kilometres from the main highway to Razdol, and they walked the last 350 metres to the institution along an icy path. At the time of the visit a bread delivery truck had stopped at the top of the path and a couple of residents carried the bread down to the institution. Sometimes the road is not passable because of snow. The institution had no central heating and used wood-burning stoves in dormitories.

Most of the buildings visited were in a poor state of repair. The staff explained that they had not been properly maintained since they were established as social care homes because of lack of funds. The level of neglect rendered some buildings derelict, filthy, and in places, dangerous for the residents. Cherni Vrh attempted some improvement to the environment and Podgumer had an unfinished new facility that was desperately needed by residents who were accommodated in the crumbling structure of a 19th century monastery. Walls and floors in most homes visited were filthy and bare and had not been painted for years. Dormitories frequently contained large numbers of residents and few institutions had any space, even toilets, which afforded privacy. Night-tables or lockers for residents to store their property were rare. Electricity was centrally controlled and there was no possibility of using the lights in daytime. It was impossible therefore to establish how many of the visited dormitories had working light fixtures or functioning light bulbs. In several institutions the beds were found neatly made-up with clean sheets. These, however, could not hide the fact that most mattresses, when turned over, revealed that they were soiled, torn and very damp. The noise level inside some of the institutions visited was very high which would be very distressing to those with autistic disorders.

In Razdol the second floor dormitory measuring 10m x 10m (31ft. x 31ft.) contained 33 beds. At the time of the visit only two had sheets. The orderly explained that they had sufficient quantity of bedding but did not use it: "The women are ill and they would only quickly soil the sheets". Some of the mattresses examined by AI representatives were heavily soiled and torn. In the centre of the dormitory was a small wood-burning stove which was fired only once a day at around 4pm. The firewood was kept in a storeroom on the same floor and the key was held by the orderly on duty. The residents are woken at 5am. After breakfast the women spend

[71] The exception is the facility for women with mental disabilities in Cherni Vrh which had the best living conditions of all the visited institutions and the staff generally appeared concerned and caring. Similar conditions were observed in Gorni Chiflik in June 2002.

time in the "day room' which is in a nearby building where they can watch TV. The dining room was located in the basement and had a separate entrance from the yard. At the time of the visit the grounds all around the main building, as already noted, were covered by deep snow and residents, some of whom were observed in tennis shoes without socks, some barefoot, walking on icy paths between the different areas where they spend the day.

At Pastra the whole area was cramped and the men were in fenced yards without any space where they could have some privacy. This institution accommodated 107 male residents in three blocks, each separately fenced off. Block number one had six dormitories on the first floor. In the largest which had 10 beds occupied by 11 men there was a stove which supplemented the inadequate central heating. At the time of the visit the stove was fired with twigs and dried leaves, stored under one of the beds opposite from the stove, and the room was full of smoke. Two rooms on this floor with five and six beds respectively did not have working light bulbs. Old metal beds with thin, worn-out mattresses were the only furnishings in the dormitories. No bedding was provided, only blankets. In the "day-room"/dining room on the ground floor there was a small portable TV in a locked cabinet set high up on the wall. There was no sound coming from the television program and the remote control was kept by the orderly. The toilet for this block was some 30 metres away along a snow-covered path in an outhouse. Faeces blocked the hole in the ground and covered the snow around the outhouse. In block number two there were three rooms on the first floor, with one, four and seven beds respectively. Some beds had no mattresses and a few did not even have spring frames but only flat metal bars. When asked how the residents sleep in such beds the orderly replied to an Amnesty International representative that they put their coats across the metal bars and then lie on top. The orderly also explained that lights are centrally controlled and switched off at midnight. The residents were ordered to rise at 4am. When questioned about the rationale for such early awakening he stated: "Just so! Sometimes it can vary. It depends!" This was a clear admission of abuse of power by the staff. One can only speculate that such early wake-ups were aimed at keeping the residents exhausted all day, less active and demanding for staff attention. On the evening of the visit only two orderlies and a nurse were on duty in this institution comprising three buildings, one of which is around 150 metres away from the other two.

In Radovets two men were observed in a dingy eight-bed dormitory. The room accommodated the most disabled residents. One man was blind and his bed was soiled. Under the bed was a bucket into which he would relieve himself without being assisted although he appeared to have severe impairment of the limbs. The bucket was full of urine and faeces which no one had emptied. The bare cement floor was dirty and the whitewashed walls grey. The following morning when Amnesty International's representative returned the floor had been hosed down and all the mattresses were gone but it was not clear where and why they had been moved. The blind man, who was now in clean clothes, was observed as he was carried up a staircase by two other residents to the "barber room". He appeared to be in great discomfort but the staff who were watching him did not take any steps to establish the reason for his distress or to address it in any way.

In Samuil, male residents, three of whom had been transferred there from Terter[72], were accommodated in a small two-room house in the yard. Six men slept in one very dingy room. The windows, without any glass, were almost entirely boarded up. Three young men who were sitting on a bed displayed possible symptoms of severe autistic disorders. In the adjoining room which had no lights four men shared three beds. According to the staff one of the beds was being repaired. There was a seclusion cell with a cage which allegedly was not in use. The doors to both rooms were locked by the staff at night.[73]

[72] The social care home which was closed by the authorities following a visited by the CPT. The CPT observed that "conditions in which residents were being held in Block 3 could fairly be described as inhuman and degrading, and those of the great majority of the residents in Blocks 1 and 2 were unsatisfactory" and issued extensive recommendations to the Bulgarian authorities under Article 8, paragraph 5 of the Convention, when the visiting delegation presented its observations to the competent authorities in the course of the visit.

[73] It is very probable that the CPT would have considered these conditions, or the conditions in Radovets and Dragash Voyvoda

'An overcoat is placed on the bed instead of a mattress', explained an orderly in Pastra © AI

In Podgumer for 21 residents in the "acute ward"[74], the distinction between living quarters and seclusion was somewhat blurred. The small two-story building close to the main entrance of the facility appeared to be synonymous with seclusion. In the small dormitory there were seven beds for 12 residents. The two other dormitories contained five and four beds respectively. The residents can also use a narrow corridor in which breakfast was being served at the time of the visit. They were not allowed to leave this very cramped space without special permission. One nurse stated: "It is better for them not to leave, because they run away". In the basement of this building there were two cells resembling medieval dungeons, and a room with six beds. None had glass in the windows or any heating. The outside temperature at the time of the visit was around freezing point but inside it seemed even colder. One man whose name was given by the orderly only as Ilian had been brought there at 5am by the staff and a guard, who is contracted from a municipal company and carried a truncheon. The resident reportedly attempted to break a window in one of the dormitories where he had been accommodated the previous two months. He was heavily sedated and left lying in the bed covered by several thick blankets, smoking a cigarette. Another resident of the "acute ward" stated: "We come up and are sent down. And up again and down again." Later the representative of Amnesty International was unable to establish the identity of those assigned to the "acute ward" and how long they had been "accommodated' there. The head nurse suggested that the social worker kept such records. The social worker maintained a "Main

where Amnesty International representatives met with former residents of Terter, as inhuman and degrading. Closing down Terter and transferring its residents to other, similarly inadequate institutions, may have been motivated by the authorities' lack of will and/or ability to put in place CPT's extensive recommendations for the improvement of living conditions and treatment of Terter residents.

74 The director of Podgumer, who is a psychiatrist, has named the three separate units of the facility as "acute ward", "chronic ward" and "the hospital".

Book", recording daily attendance of the residents in a manner which was more systematic than in other institutions visited. This record even showed special menus for certain residents, those who were absent without permission to leave, residents who did not turn up for a meal, residents who were receiving treatment

in a Sofia hospital. However, there was no record of who was in the "acute ward". The social worker thought that such information might be kept by the head nurse. The section on seclusion in this report further describes similar failures to keep full records of confining residents in this manner in other institutions visited.

Clothing

Almost nobody had their own clothing. Principle 13(2) of the MI Principles state that: "The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age… " At Razdol some of the women were observed walking without any footwear in the snow.

In Radovets several men complained that they were being subjected to "no.2 haircuts", associated with prisoners or army recruits, which they felt left them without a dignified appearance. In Dragash Voyvoda a number of men had just been shaved by a barber; an elderly man had many cuts and was bleeding. The barber stated that it took him three days to shave all 144 men in the institution. He shaved six or seven men with the same razor blade and had nothing to stop the bleeding if anyone was cut.

Amnesty International recommends to the Bulgarian authorities:

To significantly improve living conditions in all institutions particularly where these amount to inhuman and degrading treatment in violation of international law, and to ensure that institutions are structurally safe and protected from fire and other hazards. To establish standards for living conditions and treatment appropriate for the purpose of caring for people with special needs. To effectively exercise supervisory functions and ensure that the set standards are respected and maintained.

Amnesty International's concern:

In all the institutions visited residents were dressed in ragged clothing or old army uniforms.

Food

All the homes were providing three meals a day, but occasionally the food was from tins whose expiry date had passed. Some of these were received from the municipal service for social assistance, and others were donations without which few social care homes would be able to feed the residents. None of the homes visited kept weight and height records in the medical files of the residents. In Dragash Voyvoda malnutrition was documented in five post-mortem examinations from February 2001 and March 2002. Asked to comment on this the general practitioner who took over the care of the residents in January 2002 stated that most of them were malnourished and would be described as suffering from cachexia - lack of any body fat matter. In practically all homes visited residents complained that the food was of poor quality and insufficient quantity. Many experienced difficulties because they could not obtain any food between the meals. In only one of the social care homes, Podgumer, were certain residents registered for special snacks at 10am and 4pm.

Amnesty International's concern:

All the Homes were providing three meals a day, but many residents appeared malnourished and complained that the food was of poor quality and insufficient quantity.

The dining rooms were no better than the dormitories or other facilities. Only at Cherni Vrh did dining room tables have table cloths. In some homes the dining room was also the "day-room" which usually contained a television set. In Dragash Voyvoda, the evening meal at the time of the visit was served on tables set with table cloths. An orderly assisted residents in rinsing their hands in a very strong solution of potassium

permanganate before they washed them under the tap. Other orderlies were helping to serve a meal of a bean stew and bread. Residents found these arrangements amusing and attributed them to the presence of outside visitors. They said that spoons were not usually available for the evening meal and some residents were observed eating without using them.

At Razdol the dining room was entered via a small, entrance hall which was in almost total darkness although it was mid-day. At the time of the visit tens of women were queuing, waiting to be admitted into the dining room. The meal, consisting of a bean soup, bread and halva, was served in a room with 10 bare tables and no chairs and the women ate standing up. The staff explained that chairs were removed "because the residents threw them at each other". The same meal was taken in buckets to the women who were confined to their beds.

Heating

Razdol, Dragash Voyvoda and Radovets did not have central heating and in Pastra old stoves were still in use to supplement the inadequate heating system. Such arrangement posed a constant fire hazard. According to an orderly interviewed by an Amnesty International representative in Dragash Voyvoda in April 2002, fires had been frequent in the past. When asked to show what means were available on site to be used in such situations, he stated that the key to the room where the fire extinguishing equipment is reportedly kept was held by a member of the staff who had already left the premises at the time of the visit. He further stated: "You should not worry. I would break down the door and in any case there are around 140 men here who can be quickly organized to bring water in buckets."

Providing adequate quantities of heating fuel in places with central heating is invariably a concern for all social care home directors. To purchase the heating fuel for Sanadinovo, the director used 13,000 leva (US$6,500) received from the Ministry of Labour and Social Policy as emergency assistance to this institution following Amnesty International's appeals in October 2001.

Sanitary facilities

The toilet facilities were filthy and the stench was overwhelming. Some residents who were confined to their beds did not get to toilets and were just cursorily cleaned up where they lay. The vast majority of the lavatories consisted of a hole in the ground, which made access difficult for the elderly or people with physical impairments. Most toilets were in outhouses without any lighting at night, and frequently access was made even more difficult by lack of any lighting on the grounds.

The bathing facilities were all crude, often broken and for many, inaccessible. In most homes they were located in a separate building, a fair distance from the dormitories, and the residents were allowed to use them, according to a schedule, once a week. Many residents complained that in winter months they would not bath at all as they found it unbearable to walk in the freezing cold back to the dormitories. Water faucets for daily use were in several places available only outside in the yards.

In Razdol, with 110 female residents, there was no bathroom. A corner of the laundry room had been "adapted' for bathing. One resident complained in the course of the January 2002 visit that she had not been able to wash her hair for several months and that it was difficult to bath during winter as they had to walk in the snow from the laundry room back to the dormitories. The toilets on the ground floor had gaping holes in the roof which allowed for snow and ice to collect on the wall pipes and on the floor. The hole in the floor was blocked by chunks of ice, faeces and sundry refuse.

In Radovets the bathroom was located on the ground floor of a two-storey building, adjacent to the laundry room. It comprised of two interconnected rooms - one with a long trough without any working faucets -

and another, the "shower room", with only one shower head. Over 90 men reportedly bathed here once a week with several men having to shower at the same time.[75]

The situation in Samuil was particularly distressing. At the time of the January 2002 visit there had been no running water in the institution since May 2001 – an eight-month period that included the whole of summer. Water was brought from a spring 14km away in a tanker which was towed by a tractor. Baths were reportedly still organized once a week. The bathroom in the basement of the main facility was dingy and in a bad state of repair. The water was heated by hard-burning fuel. Only one toilet, which was filthy, was available to over 100 women accommodated in the dormitories in the main building. There was an outhouse lavatory with 6 holes in the ground with no privacy. This outhouse was 150 metres away from the entrance to the building and the path at the time of the visit was icy. It was not possible to enter this toilet without stepping deep into excrement, which extended even onto the path outside. The staff stated that they were only able to hose it down once a day.

Outhouse in Samuil which serves as a toilet © AI

In Dragash Voyvoda the outhouses were almost totally exposed to the view of others and afforded no privacy.[76] Lack of any electric lighting in the yards where the outhouses were located may explain why the

[75] In June 2002 Amnesty International's representative who revisited Radovets found that three new bathrooms had been built in the course of a refurbishment project begun in November 2001 with the support of UNDP assistance program for regional development. The refurbishment of the facility, which had not been completed at the time of the visit, took place with all residents still on site, living in conditions which were extremely distressing, particularly those for ten men with most severe disabilities who were accommodated in a small eight-bed dormitory.

[76] Most institutions visited lacked any space, including toilets, which afforded any privacy for the residents.

rain-water gutter around a small dormitory building was filled with excrement. The bathroom and the laundry were located in a small building. The changing room had no glass in the four large windows. Substantial sections of mortar had fallen off the ceiling in this room and there was a gaping crack between the ceiling and the wall adjoining the bathroom. There were no showers and the bathing facilities were rudimentary and consisted of several small, low-built basins (apparently designed for the washing of feet) with hot and cold water taps. A resident demonstrated how these basins, when used, would be plugged with a piece of rag so that they could be filled with warm water and then an empty, rusty can would be used by the person bathing to pour water over his body.

In Cherni Vrh one two-storey building which accommodated over 40, mostly elderly, women had no toilet. Staff explained that a bucket was placed at the main entrance, which is locked at night, where the residents could empty plastic bottles or other devices which they used to relieve themselves.

Reports of ill-treatment

A 56-year-old woman in Razdol told Amnesty International's representative: "Some of the orderlies beat us and lock us up," but she would not show where they are locked up because she was afraid that she might be seen by a member of the staff. Residents in Dragash Voyvoda stated that they were sometimes beaten with a stick by certain orderlies. A resident who had left the institution without permission and was detained by the police in Nikopol was brought back to Dragash Voyvoda at around 6pm on 1 April 2002. He had a prominent swelling on the right cheekbone and bruising around the eye but he could not explain, possibly because two orderlies were present, how he had suffered this injury. Two orderlies at this institution told Amnesty International's representative that each time they were required to bring back a resident they would have to do

Amnesty International recommends to the Bulgarian authorities:

As a matter of utmost urgency, to ensure that each resident is provided with the following:

- a bed with a mattress, blankets and sheets, which would be cleaned in an appropriate way and at regular intervals;

- basic personal hygiene items such as towels, soap, toothpaste, toothbrush and toilet paper;

- ready access to clean and adequate toilets and bathrooms, where they should be able to take a shower at least once a week; the most vulnerable residents should be appropriately supervised and assisted by staff in maintaining their personal hygiene in a dignified manner;

- clothing and shoes, including socks and underwear, appropriate for the season and the resident's size which would be cleaned and returned to the resident at regular intervals;

- three meals daily that are of good quality and sufficient quantity;

- a dining room equipped with chairs and/or benches in sufficient numbers; each resident should be provided with appropriate eating utensils and allowed sufficient time to finish the meal; staff should ensure that the most vulnerable residents are able to take their meals under supervision and in decent conditions;

- ready access to appropriate food and drink between meals;

- materials for recreational activities, including writing materials, books, newspapers, games etc.;

- living quarters which are adequately heated.

Amnesty International's concern:

Residents in most institutions visited complained that they were sometimes ill-treated by certain orderlies. Most were afraid to talk about such incidents on record in fear of being harassed as a result.

it with their private vehicles and at their own expense, which could be considerable if they needed to travel to a distant part of the country. A resident in Radovets described how the orderlies would beat the male residents with a piece of rubber hose or a stick which was covered with bandages at the top.

The absence of an effective remedy for ill-treatment complaints and lack of guarantees to protect complainants from harassment are in violation of international human rights standards. Article 2 of the ICCPR requires "an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity"(Article 2(3)(A)); and that "such remedies are enforced when granted" (Article 2(3)(C)). Also, Article 13 of the Convention against Torture, in connection with Article 16, requires guarantees for "the right to complain" and further requires that "steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

Seclusion and Restraint

All homes visited resorted to seclusion methods which Amnesty International considered to be cruel, inhuman and degrading treatment and in violation of international human rights standards. No detailed records were kept of how and when seclusion and restraining methods were used and it appeared that such ways of controlling residents' behaviour would be ordered by a nurse or an orderly. Even in Cherni Vrh, which of all the visited institutions had the best living conditions for its residents and staff appeared genuinely caring and concerned, the use of totally unacceptable methods of seclusion and restraint was indicative that the staff generally had no training in controlling behaviour by means other than abusive pharmacotherapy or use of force.[77]

Amnesty International recommends to the Bulgarian authorities:

To instruct all non-medical staff, particularly orderlies who are also performing security-related tasks, to respect the rights of residents and to make clear that physical or psychological ill-treatment of residents is not acceptable and will be subject to severe sanctions.

Amnesty International's concern:

All homes visited by Amnesty International resorted to the use of seclusion methods, usually imposed as punishments, which were cruel, inhuman or degrading and in violation of international human rights standards. No detailed records were kept of how and when seclusion and methods of restraint were used and it appeared that such ways of controlling residents' behaviour would be ordered by a nurse or an orderly.

[77] . With regard to staff training Rule 19 of the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly in Resolution 48/96 of 4 March 1994, states, *inter alia*, the following: "States are responsible for ensuring the adequate training of personnel, at all levels, involved in the planning and provision of programmes and services concerning persons with disabilities". In this training "the principle of full participation and equality should be appropriately reflected."

A seclusion cell in Radovets © AI

In Radovets the nurse on duty explained that there was little aggressive behaviour between residents, providing they took their medication regularly. Otherwise, she noted: "We intervene; we have "jails' but we do not use them frequently". In the courtyard there was a cage-like structure with a bench in it. Some of the residents also showed the delegation a space under the stairs of a two-storey building. There was a metal door with a fixture on the outside for a lock and a small rectangular opening at about 150 cm from the ground. The greatest height, at the door, was about 165cm. The "ceiling' of this space, formed by the stairs, sloped to ground level and it was impossible for any man of average height to stand upright when inside this space. The ground distance between the door and the point where the stairs meet the ground was roughly 150cm. The floor was of paved blocks. A staff member told us that this space was used for storing wood. Residents claimed that some of them had been punished by being detained there for many days.[78] Petko K. claimed that he had been held there for two weeks and then kept for 10 days in the seclusion room of his dormitory building. The nurse listening near-by commented that Petko K. was exaggerating and that he had been "detained for a few days only". The director of this social home then indicated that he had only been secluded for a day. The seclusion room in question was filthy, with a bare, soiled and torn mattress on an iron-framed bed. When Amnesty International's representative returned the following morning this room had been thoroughly cleaned and the bed was made up with sheets, a blanket and a covered pillow, bedding of a kind unseen on any of the beds in the dormitories the previous evening. There was even a small carpet, albeit worn-out, a feature not found in any of the dormitories.[79]

[78] At the time of the June 2002 visit this space contained a very worn mattress, a soup bowl and a half-eaten piece of bread. It appeared as if it had been occupied until the visitors arrived. As Amnesty International's delegate prepared to photograph this seclusion area in the presence of the social care home director and the chief of the municipal service for social assistance an orderly was instructed to quickly lock the steel door.

[79] Following the refurbishment of this building which began in November 2001 this seclusion room no longer exists when Amnesty International's representative visited Radovets in June 2002. However, the adjoining building, where the works had been completed, contained two rooms, which were apparently used for seclusion. They were fairly narrow and contained three beds each. They were not locked at the time of the visit but the occupants told the visitors that this was only temporary and for their benefit. One of the rooms, which had practically no natural light, was occupied by one man. The other room was occupied by four men who stated that they were being punished for trying to escape.

In Dragash Voyvoda there were two seclusion rooms with three or four beds in each. A corner in one of the rooms was fenced-off with wire, forming a cage-like enclosure. According to the residents, a bench would be placed there when someone was held in the cage as "punishment'. When the weather was warmer a cage-like unit in the yard was used. A resident interviewed on 1 April 2002 stated that his leg had been chained to the table in the "day room" the previous evening. This allegation was confirmed by several other residents. The director, Viara Nikolova, appointed in May 2001, told Amnesty International that she had given instructions to the staff that seclusion rooms and restraining methods, such as a 30-centimetres-long chain, which she had recently found on the grounds, must not be used. Residents however claimed that this order was not followed by the staff. One man said: "This entire place is an *izolator"*.

In Pastra the seclusion room in the basement of the second block was totally derelict, full of collapsed building material and sundry refuse. There was one rusty bed on which lay what appeared to be the remains of a mattress. The nurse on duty explained that the room was only used when a resident was aggressive in which case he would be kept there for about an hour until the medication administered in such circumstances took effect.

In Cherni Vrh the staff appeared rather proud of the seclusion facility which had been refurbished in the spring of 2000. One room in a small single-story building contained three cells, long enough for a single bed and only slightly wider. The cells had dividing walls and iron-barred doors. The remaining space in the room was practically entirely taken up with two more beds, one of which was blocking the door to the cell on the left-hand side. This cell was occupied by 38-year-old S.T. who had already been held there for a month at the time of the visit. She was knitting socks and appeared very calm. She explained that a bucket in the cell served as the toilet. The nurse stated that she was in seclusion "because she fights with other residents and will be allowed out only if she is well behaved". Another woman, S.I. who was 33 years old, had been held for 20 days in seclusion at the time of the visit and was described by the nurse as being of a "conflict provoking nature". When S.I. stated that she was never allowed to leave the cell, the nurse interjected that this was not true and that she had been allowed out sometimes, although she did not specify how frequently and for how long. The third cell had been occupied for the previous two months by Z.D. who was asleep at the time of the visit. The nurse explained that Z.D. "tears her clothes and speaks a lot; she is very vivacious". One of the two beds outside the cells was occupied by M.D., a 50-year-old woman with a university degree in electromechanical engineering, who had been in seclusion for over a year at the time of the visit. She complained that she had nothing to read and that she had hoped the visitors would have some newspapers to give her. The nurse explained that her seclusion had been arranged at her brother's request, who is M.D.'s legal guardian, after she had fled from the institution on several occasions since her placement in 1997. Apparently the psychiatrist, who treated the residents of Cherni Vrh and who was previously director of a large state psychiatric hospital, agreed with the brother's request. The only record for the use of seclusion in this social care home was a notebook referred to by the staff as "the book for the naughty"[80]. However, it contained no record of when the measure had been ordered and by whom. The staff explained that the decision for placement in seclusion was taken on site after a telephone consultation with the psychiatrist.

[80] This notebook simply contained the names of those in seclusion and occasionally a brief remark about their behaviour. Z.D. was described as "unpredictable".

An orderly in Cherni Vrh demonstrates the use of a strait-jacket on a distressed woman who is made to wear it every night © AI

The seclusion house in Cherni Vrh contained two further rooms, one of which was locked at the time of the visit. This room accommodated eight women who were described as "prone to run away". They were reportedly allowed out once a day but it was not clear for how long. R.G., a young woman who had been diagnosed as "moderately retarded" was restrained by a strait-jacket every evening and sometimes during the day as well. In July 2001 R.G. wound some thread very tightly around her little finger, reportedly pretending that this was a ring. Several days later, after the staff failed to detect that the "ring' was blocking blood circulation in her finger, it had to be surgically amputated. The orderly on duty demonstrated how the strait-jacket would be applied which caused R.G. to cry in distress. In the other room with beds for a similar number of residents, 28-year-old J.S. who was lying on a bed had her ankle chained to the wall. She was subject to this form of restraint for a year "because she had escaped from the institution" and had also been held in seclusion in the past. he nurse commented: "I take them out; I then put them back in". J.S.'s medical file stated, *inter alia*, that when she had been examined on 20 August 2001 she was "... not calm, agitated at times.

Amnesty International recommends to the Bulgarian authorities:

To ensure that any method of restraint and seclusion, which should be prescribed or authorized by a doctor, supervised by medical staff and strictly restricted in duration, is consistent with international standards regarding cruel, inhuman and degrading treatment and regarding care of persons with mental disabilities, and to particularly ensure that seclusion is not used as punishment. To provide instructions for all social care homes on protocols on and special records (as well as in the resident's file) concerning the enforcement of restraint and seclusion and to monitor that they are effectively maintained.

Increase the dosage of Chlorpromazin 2-1-0". Dr Mary Myers, Amnesty International's representative, later stated: "It was difficult to understand that anyone who had been chained to the wall for such a long time could be calm and not agitated. Clearly the medication was prescribed not to treat but to subdue her."

Diagnosis, professional staffing and skills

Most people were placed in social care homes on the basis of diagnoses made long ago and of very dubious accuracy. Some of the diagnoses found in residents' medical records were strange. One example was "mild oligophrenia - severe form". Schizophrenia appeared to be the only psychiatric diagnosis made. Of some 700 adult residents in social homes visited by Amnesty International's representatives, none had any mention of mood disorders, (i.e. bipolar affective disorder, depression and/or mania) - although depression is much more common in the community than schizophrenia.

Amnesty International's concern:

The institutions visited were grossly understaffed. Both medical and non-medical staff (orderlies) lacked appropriate training to work with people with mental disabilities. Most of the institutions were far from urban centres and it was therefore difficult for residents to receive appropriate medical care and for the institution to recruit staff that had appropriate training

The adults with developmental disorders mostly came from the social care homes for children. Their diagnoses consisted of "mental retardation", graded in severity. In most cases the diagnosis had never been reviewed, and that diagnosis anyway was not used clinically but as a legal basis for institutional placement.

There were fewer people with epilepsy than would be expected among such a population, but perhaps few have survived in such conditions.

The social care homes with their squalor, overcrowding, degradation, lack of human purpose, or dignity, provided dehumanizing environments which actually created, and certainly did not alleviate, mental health problems in their residents.

Although these institutions were for people with various "mental disabilities", the levels of staffing and the quality of training were dangerously inadequate. Firstly, the input of psychiatrists to the social homes was extremely uncertain. There were no regulations of any kind on how often a psychiatrist should visit the social care homes. In some, a psychiatrist had only recently started attending regularly each month, or residents attended the local psychiatric clinic. Elsewhere there was no regular contact.

Psychiatric treatment in many institutions visited appeared to consist solely of prescribing medication on the basis of data provided by the medical staff in the home. A visiting psychiatrist would reportedly "examine' 30 residents in the space of two or three hours. In Dragash Voyvoda, prior to August 2001 the residents had not been examined by a psychiatrist for four or five years. It appeared that their psychiatric medication had been prescribed in institutions, mainly psychiatric hospitals, where they had been treated before arriving in Dragash Voyvoda. In Radovets the nurse on duty stated that during his most recent visit to the institution the psychiatrist was able to examine 30 patients between 9am and 1or 2pm as well as to write out new prescriptions for their medication. The nurses selected who would be examined. The institution also had an agreement with the Radnevo state psychiatric hospital to admit residents as required. When asked what symptoms might prompt the staff to send the patient for treatment the reply was: when a patient for two or three days stays mostly in bed, refuses to take food or to engage in any social contact. At the time of the visit two residents appeared to be in an acute state of mental disorder but the director had failed to have the men taken to the hospital. The director stated that it was not possible to call the general practitioner, who could refer the two residents to the hospital, because it was late (around 8pm) and he lived some 30 kilometres away, and that he would be called in the morning. In case of a life-threatening emergency, an ambulance from the nearest hospital, also some 30 kilometres away, would take around an hour to arrive.

Amnesty International recommends to the Bulgarian authorities:

To ensure that psychiatric diagnoses of all residents are periodically reassessed and residents subsequently appropriately placed or released. All residents should regularly be attended by, and have easy access, to a psychiatrist.

Social care homes were managed by a director who may come from any background and not have relevant qualifications. There was a team of around six nurses with a Senior in charge, in all the institutions visited. The Senior Nurse carried a lot of authority with regard to the use of medication, seclusion and physical restraint. The nurses had "general" training and some may have had three months' psychiatric training additionally. For comparison, in the UK psychiatric nurses undergo three years of training, or if they already have general training, take 18 months of further training to gain their psychiatric qualification. There is a separate qualification in learning disabilities, which also takes three years.

In addition there were orderlies - two to three times the number of nurses. These were people from the local village with little, if any, training. Their only means of keeping control was the use of seclusion and restraint as sanctioned by the nursing staff. The only "treatment" available was medication. The only management of the residents' behaviour was physical restraint of various kinds.

There was seemingly no awareness of the "hierarchy of human needs" described by Abraham Maslow[81] 50 years ago, nor of the effects that deprivation of these needs creates. Maslow described a hierarchy of five levels of human needs, starting with the physiological ones of food, drink, sleep, warmth, movement, stimulation, sex, etc. The second level is the one of safety and a sense of security. The third is the need for social and emotional relationships and a sense of belonging; the fourth is the need for a sense of competence and self-esteem; and the final one is the need for "self-actualisation", which means achieving to at least some degree one's dreams. (It requires the opportunity to have dreams in the first place.) Institutional care is expected to meet the first two levels e.g. nutrition and safety, but the other three levels of human needs are disregarded. However, even the first two levels of needs were not provided for in the social care homes visited in Bulgaria.

Many of the problems of people with disabilities or chronic mental illness can be ascribed to the failure of institutions and systems to recognise and meet these basic human needs. (It is pointless to address "special needs" if basic ones are neglected although "special needs" were not recognised in the social homes visited). Humans are innately occupational beings and the total lack of meaningful activities clearly left unused energy which contributed to the aggression in residents.

Staff were expected to deal with behavioural problems (many created by the environment) with no understanding of behavioural management or positive approaches. This was illustrated at Cherni Vrh, where efforts were being made to improve the environment, which was cleaner than most visited, but women were being caged or put in a strait-jacket[82].

Understaffing was at dangerously low levels. In Dragash Voyvoda, an institution with over 140 men, the staff comprised two part-time senior nurses (locally referred to as "feldshers"), six nurses and 20 orderlies. At the time of the first visit in January 2002 there were only three orderlies on night duty; in April only two orderlies and a nurse. During the second visit the Amnesty International representative observed how a resident had been injured by another resident. Apparently such incidents were not infrequent and the staff, because of

81 Maslow, Abraham, "Motivation and personality", Harper Rowe, 1954,1987.

82 As described in detail in the section dealing with methods of seclusion and restraint.

the small number as well as lack of appropriate training, were unable to control violent behaviour or residents, except by means of physical force.

On the issue of understaffing and the ability of the government to provide adequate resources, it is important to note that the Committee on Economic, Social and Cultural Rights, in its General Comment on this subject stated the following:

"The obligation of states parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities. This almost invariably means that additional resources will need to be made available for this purpose… (Para. 9) The duty of States Parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints." (Para. 10)[83]

Staff attitudes in the visited institutions ranged from genuine concern to provide good care given the limitation of the available resources and their own knowledge and skills, to those where the staff appeared excessively paternalistic. In January 2002 a male orderly in Dragash Voyvoda was very provocative with an elderly resident who was proudly telling Amnesty International's representative that he had his own pair of boots. The orderly's behaviour, teasing the old man, treating him as if he was a child, and unnecessarily challenging his ownership of the boots, was a classic example of the institutional practice of demonstrating the hierarchy of power over the resident. Some directors saw their role as maintaining the *status quo*, their major concern apparently to maintain the facility and therefore jobs for the staff.

Amnesty International recommends to the Bulgarian authorities

To ensure that the social care homes are staffed by a sufficient number of medical and non-medical personnel appropriately trained for their role.

The failure to attract qualified staff to such institutions is partly explained by the terms and conditions of employment of the staff which were at very low levels. Monthly salaries of around 160 leva (US$ 80) for a nurse and around 120 leva (US$ 60) for an orderly, many of whom would also have to pay a monthly amount of 15 - 20 leva for transportation to work, were insufficient to motivate those already employed or to recruit better qualified staff.

General medical services

General practitioners were contracted in the local community and they visited the social care home once a week or less frequently. In Radovets Amnesty International spoke with Dr H.H., a retired paediatric physician who had been contracted to visit the institution two times a week for about two and a half hours. In fact, he claimed to visit more frequently and showed a notebook in which his visits were recorded. All the days in the month when the visits were supposed to take place appeared to have been written in at the beginning of the month. For the nine months of 2001 his visit invariably lasted from 11am to 1.30pm. Even though it was only the beginning of October all the dates in the month when he was supposed to visit were already written including the hours of his visit and at the time of the interview he had already signed in the book that the visit had been completed. When asked to explain why he did not properly record the treatment administered to residents Dr H. explained that he had too much work as he was responsible for three villages in the region. He had worked in Radovets for the last seven years mostly dealing with skin problems, traumas, and some mental illnesses

[83] UN Committee on Economic, Social and Cultural Rights, General Comment No. 5, Eleventh Session (1994); "Persons with Disabilities." cited in HRI/GEN/1/REV.5.

"which do not require psychiatric attention". On admission he examined all new residents and kept a record of this as required by law.

Poor records of medical treatment as well as records of incidents in which residents suffered injuries were observed in other visited social care homes. At Razdol Amnesty International's representatives were unable to verify the director's statement that a female resident who had reportedly jumped out of a first floor room had indeed been treated in a hospital. The treatment reportedly lasted two months and the resident was subsequently taken to the hospital every 24 days for a check-up. Amnesty International's representatives had observed that the fracture of her left ankle had not healed properly. Similar incidents in which residents suffered injuries were only recorded in a daily report book. They were not reported to any outside authority or investigated in any manner. The police were only notified about "an escape". At the time of the visit one woman, among the fifteen who were considered as "bedridden", had bruises under her eyes. She was unable to explain how she had suffered these injuries. The director explained that she had either been in a fight or had suffered a fall. According to the nurse she had fallen a week earlier, hitting her forehead. She was then treated with cold compresses and "there were no complaints". There was no record of this incident in the daily report book. The nurses explained that the general practitioner had not been summoned to examine her nor had it seemed necessary to take her to a local surgery. In her medical records the last entry had been on 5 February 2001, almost a year earlier, at which time she fell and injured her back.

Amnesty International recommends to the Bulgarian authorities:

To ensure that all residents undergo a full medical examination on admission. Any findings suggesting episodes of assault or other ill-treatment or neglect should be reported to the investigative authorities. Medical records should contain a comprehensive diagnostic record as well as an ongoing record of the patient's mental and physical state of health and of the treatment. Information about any injury suffered should be recorded in the medical file as well as in a specific register and be subject to an inquiry. Specialist medical and dental care should be prompt and accessible. The personal medical file should contain the resident's weight and height records which should be maintained at regular intervals.

Specialist medical and dental care were rare. In Samuil, an institution with around 100 women, no one had been referred for a gynaecological examination in 2001. In Dragash Voyvoda a resident complained that he had requested to have an eye examination over a year ago but without any results. A resident in Radovets had a very large tooth abscess on the right side of the jaw. She stated that the inflammation began a few days earlier and that she was being treated with aspirin. The director stated that she would be taken to the dentist the following day.

Medication

Amnesty International's concern:

Psychotropic medication was openly used in the institutions visited to subdue behaviours which may well not have a psychiatric basis, but be due to distress and/or anger arising from the environment. The prescribing of drugs was not consistent with good medical practice in some institutions. There was no recognition of the residents' right to free and informed consent to medication. Storage of medication was not adequate in several institutions visited.

The results of the on-site research by Amnesty International's representatives were a matter for grave concern to the organization. The MI Principles state: "Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purpose and shall never be administered as a punishment

or for the convenience of others. Subject to the provisions of paragraph 15 of Principle 11[84] **...** mental health practitioners shall only administer medication of known or demonstrated efficacy." (Principle 10, paragraph 1)

Background

Drugs used in psychiatry are referred to as psychotropic, because they have effects which are mainly, but by no means exclusively, on mental symptoms. Until some 40 years ago the range of drugs available to sedate mania and severe schizophrenia was very limited and acted by reducing nervous system activity as a whole, not only florid behaviours but clarity of thought, reaction time and mood. This global effect is referred to as sedation, and people are left feeling slow and drowsy. Such drugs include the barbiturates, among them phenobarbitone[85] which was used in the past for epilepsy. These drugs create dependency as well as depressive cognitive processes.

Since the 1960s the range of psychotropic medications has continually developed, becoming more accurately targeted on the biochemical foci increasingly identified in brain research into mental illnesses. The "major tranquillisers" (neuroleptics, or antipsychotics), if used in appropriate situations and dosage, have a calming influence on behaviour and psychotic thoughts, without affecting clarity of consciousness. One of the oldest drugs is chlorpromazine ("Largactil"), and another is haloperidol. Although they are very useful, large doses, as well as prolonged usage, can have very undesirable side effects. There are many newer antipsychotics available now, in which the side effects are reduced. In any type, excessive doses of tranquillisers act as a chemical cosh and leave the individual "zombie-like".

The therapeutic aim of these drugs is to liberate people from distressing experiences, and not in effect to paralyse them. The commonest side effect is on movement control, similar to that seen in Parkinson's Disease. This may include akathisia (an unpleasant feeling of physical restlessness and inability to keep still - patients usually find this very hard to describe), or acute dystonia, when the eyes may roll upward, the tongue protrude, and the neck and back go into spasm, or the extra-pyramidal (parkinsonian) syndrome, which is the commonest form. Here the person experiences muscular rigidity, shows an expressionless face, tremor, and jerky movements. All these side effects are well recognized and treated with "anticholinergic" drugs (referred to in Bulgaria as "correctives"). Prolonged use of anticholinergics may later produce another neurological disorder called tardive dyskinesia (TD) - uncontrollable movements of the mouth, tongue, face and elsewhere – which may develop at a later date. This disorder does not always clear up when neuroleptics are stopped. TD can also be produced with the prolonged use of anticholinergics.

The second big group of commonly used modern medications is the range of antidepressants. Depressive disorders are much more common than schizophrenia, and can also result in actions of aggression, destruction or self-harm, yet not a single example of a resident receiving an antidepressant, or having a diagnosis of depressive disorder, among the 700 adults was encountered.

The practices found

Psychotropic medications were openly used in the institutions visited to subdue behaviours which may well not have a psychotic basis, but be due to distress and/or anger arising from the environment. Most of the antipsychotics in use were chlorpromazine "(Largactil") or haloperidol. (The two institutions where the newer antipsychotics were used were Podgumer and Sanadinovo which, however, had some of the worst living conditions).

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[84] Paragraph 15 of Principle 11 (Consent to Treatment) states the following: "Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to give informed consent may be admitted to a clinical trial or given experimental treatment but only with the approval of a competent, independent review body specifically constituted for this purpose."

[85] In Bulgaria this drug is know under the name of Phenobarbital.

In many social homes the choice of the psychotropic drug used depended on what was available at little or no cost, as their budget was so low. Phenobarbitone was a common example. This is a very old-fashioned drug[86] used in the past for epilepsy. It is very sedating and usually extremely depressive in its effect. At Podgumer Amnesty International representative was told that 12 people were on this drug, but that only two had epilepsy and they also received carbamazepine (a conventional treatment). The other 10 received phenobarbitone "because it is the cheapest drug with which to treat their oligophrenia". In other words these 10 people, with developmental disabilities have for a range of reasons behaved in ways that were unacceptable to the staff, and were medicated with the cheapest sedative available. The phenobarbitone is treating nothing, but simply rendering residents subdued.[87]

The actual prescribing of drugs was questionable in some places. At Samuil there had been no psychiatric visits since May 2001 when the contract ran out.[88] However, the general practitioner, while unable to initiate psychotropic medication, could renew old prescriptions. At the time of the visit of Amnesty International's representatives there were 46 people on psychiatric medications, of whom 19 had visited the psychiatric clinic. The remaining residents continued on their previous drugs, and some of these were potentially hazardous. There were several residents at Samuil who were continuing to receive anticholinergic drugs although they were no longer on antipsychotic ones. As noted above, prolonged use of the anticholinergics can cause tardive dyskinesia later. Also in Samuil, a drug used for high blood pressure was used on a *p.r.n* (i.e. as necessary) basis. Treatment for high blood pressure is a sustained process, not an occasional dose of medication. Another drug "Alcozil" was available for emergency use, but the nature of the relevant emergency was unknown to the medical staff. This situation is extremely serious and threatens even what the Human Rights Committee (HRC) has called "the supreme right from which no derogation is permitted", namely the right to life as guaranteed by Article 6 of the ICCPR. In its first General Comment on this article, the HRC noted that "it is a right which should not be interpreted narrowly…" (Para. 1); and "(t)he expression 'inherent right to life' cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures." (Para. 5)[89].

Consent to medication

The idea that consent to receive medication should be obtained from residents was seemingly not recognized. The nurse on duty in Razdol stated: "There are also residents who refuse to take medicine but we have to persuade and entice them. We can put it into the food. The medication has to be taken and ultimately it can be administered by injection."

Amnesty International is concerned that the residents' right to free and informed consent to medication consistent with international human rights standards is not recognized. Where residents are incapable of giving free and informed consent to medication or other medical procedures, involuntary treatment can be provided as long as it is in the best interests of the patient and done so in a manner compatible with international standards dealing with involuntary treatment such as the MI Principles.[90]

86 Phenobarbitone was introduced nearly a century ago to treat epilepsy. Its side effects are drowsiness, irritability and depression. A well known side "paradoxical" effect is hyperactivity and emotional upset in children. According to experts, the drug should be avoided where ever possible.

87 In Obotishte, visited in June 2002, according to the nurse on duty approximately 50 men with developmental disabilities were given phenobarbitone. The facility is attended twice a week by a psychiatrist.

88 Principle 10(2) of MI Principles states the following: "All medication shall be prescribed by a mental health practitioner authorized by law and shall be recorded in the patient's records."

89 Human Rights Committee, General Comment no. 6, Article 6, Sixteenth Session (1982), cited in UN DOC. HRI/GEN/1/REV.5

90 Principle 11(2) of the MI Principles states: "Informed consent is consent obtained freely without threats or improper

Amnesty International recommends to the Bulgarian authorities:

Any prescription of medication should be in accordance with the rules of the profession and standards of the Ministry of Health, which should be made responsible for the supervision of all medical services in social care homes. The ministry should issue strict instructions on the storage and use of medication, particularly psychotropic medication, and ensure effective safeguards against any abuse of such medication. These instructions should also explicitly acknowledge the residents' right to free and informed consent to medication consistent with international human rights standards.

Storage of medications

There were supplies of diazepam ("Valium") lying around openly in several of the clinic rooms we visited. This is used quite widely in social care homes. It is useful as short-term treatment in a crisis, but people very rapidly become dependent on it and the dose has to go up to be effective. The additional concern here is that the drug is very easily accessible to staff and addiction to Valium in people who have stressed lives is a well-known phenomenon.

Other "therapies"

It has already been noted that medication was the only available therapy in most of the institutions. In most social care homes, however, some form of occupational therapy had been organized before the work-shops were closed down because of reduced resources to maintain the staff, and/or the goods produced no longer had assured buyers. The current definition of occupational therapy in most institutions visited consisted of residents doing the work of the staff. In Radovets several men were engaged in looking after a small number of pigs and sheep. They were not paid for this work, one resident explained, and as a reward they would be invited to the annual Shepherd's feast in the village, where they would be offered barbecued lamb and wine. A man who worked in the laundry said that he did most of the work himself and that only occasionally he would receive some help from another resident. Another resident explained that when someone dies a coffin is built by residents who then carry the remains of the deceased to the graveyard, where they dig the grave and bury it. Similar procedures are practised in Dragash Voyvoda where only the residents who bury the deceased know who lies in the unmarked graves.

For the vast majority of the residents visited the only activity available was watching television. The schedule of daily "activities' in Samuil was very similar to most other institutions visited. The residents were woken up at 6am. Breakfast was served at 7.30am, followed by the dispensing of medication. There were two day-rooms with television sets for around 100 women and 15 men accommodated in this institution. The second day-room is in a separate building in the court yard. At the time of the visit 22 women were in the day-room and the path to the main facility, 50 metres away, was icy and very slippery. The day-rooms were monitored by the orderlies. Lunch was served between 12 and 12.30 and the residents return to the day-rooms for the remainder of the afternoon. Dinner was between 5.30 and 6pm. After washing up, bed time was at 8pm

inducements after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on: a) diagnostic assessment; b) The purpose, method, likely duration and expected benefit of the proposed treatment; c) Alternative modes of treatment, including those less intrusive; and d) Possible pain or discomfort, risks and side-effects of the proposed treatment." Furthermore, Principle 11(6) states: "Except as provided in paragraph 7,8,12,13,14 and 15 below, a proposed plan of treatment may be given to a patient without a patient's informed consent if the following conditions are satisfied: a) The patient is, at the relevant time, held as an involuntary patient; b) An independent authority, having in its possession all relevant information, including the information specified in paragraph 2 above, is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment or, if domestic legislation so provides, that, having regard to the patient's own safety or the safety of others the patients unreasonably withholds such consent; and c) The independent authority is satisfied that the proposed plan of treatment is in the best interest of the patient's health needs."

(9 in summer time). Nine residents who were bed-ridden as they also had a physical disability (one cerebral palsy) were in two dormitories on the ground floor. They were deprived of any activity. The director explained that labour therapy for some of the residents consisted of cleaning the floors and doing other menial tasks of the staff.

Amnesty International recommends to the Bulgarian authorities:

To ensure that active therapy in accordance with international standards is provided to all residents. Any resident who is able and willing to assume some of the work which would otherwise be performed by staff should receive for this appropriate remuneration.

The "hospital" ward in Podgumer accommodated not only those with a somatic condition, other than mental disability, but also those with physical disabilities some of whom live in this ward permanently. Stefan Z., a 44-year-old man who was born with no lower limbs, was sitting on the cement floor in the doorway where he had a view of both the room and the corridor. There would have been few variations in what he was able to observe since March 1976 when he was placed in this institution. The "hospital" has a wheelchair but it was only used to take the bed-ridden residents for a bath.

High mortality rate - failure to investigate deaths in suspicious circumstances

In several institutions visited the staff appeared unwilling or unable to disclose information on the deaths of residents. In several institutions the social worker, who apparently kept this information with the personal files of all the deceased residents, was not at work on the day of the visit. In some, the directors claimed that this figure was low and concerned only very elderly residents but free access to the files of those deceased was not given. The information available in two social care homes, Radovets and Dragash Voyvoda, indicated that the mortality rates were high. In most of the homes post-mortem examinations had never been performed nor had police or other authorities investigated the circumstances of deaths of residents. Causes of death are registered in death certificates by general practitioners or "feldshers" who frequently base their "conclusions" on the information of the medical staff on duty at the time. The majority of death certificates inspected simply stated that death resulted from "the failure of the heart and respiratory function" but did not actually state what had caused it. It was not surprising that in three of the post-mortem reports available to Amnesty International's representative, the pathologist concluded that there was a discrepancy between the clinical and pathological diagnosis.

Amnesty International's concern:

In some institutions the mortality rates were high, particularly in years that had colder and longer winters. In most of the homes post-mortem examinations had never been performed nor had police or other authorities investigated the circumstances of deaths of residents. Records on deaths in social care homes are not reliably kept and apparently this data is not systematically collected and published by the National Service for Social Assistance.

Amnesty International recommends to the Bulgarian authorities:

To ensure that all deaths of residents, wherever these may have occurred, are properly recorded in social home registers and that post-mortem examinations are carried out in all instances. To ensure that all deceased residents whose remains are not claimed by the family are given a dignified burial and their graves marked appropriately

In Razdol which was visited by Amnesty International's representatives on 21 January 2002, three deaths had occurred since the beginning of the year, of which two residents were reportedly over 80 years

old[91]. However, no data was available on deaths in 2001. A random check of medical records established that 24-year-old Sonya D., who died on 4 February 2001, had no recorded history of an illness prior to her death which was noted as "acute respiratory insufficiency". The actual cause of death was never investigated.

In addition to international human rights standards concerning investigations into cases of ill-treatment already mentioned in this report in the chapter on social care homes for children, it is important to note that the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment includes the following provision: "Whenever the death … of a detained … person occurs during his detention an inquiry into the cause of death … shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case … the findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation."(Principle 34)

Amnesty International recommends to the Bulgarian authorities:

To ensure that information on mortality in social care homes is collated at the national level and published. Any institution with a significantly higher mortality rate than usual should be thoroughly investigated.

To ensure that all deaths of residents are thoroughly and impartially investigated and that the results are made public. If an investigation uncovers credible evidence that the death has resulted, directly or indirectly, from a criminal offence, those responsible must be brought to justice.

In Radovets, an institution with 91 male residents, there had been nine deaths in the first nine months of 2001.[92] Initially, the director stated that there had been only six deaths. Later, Amnesty International's representative asked to see the files of the deceased men. The social worker who then brought the files was asked by the director, who was unaware that Amnesty International's representative understands Bulgarian: "How many are there?". When she heard that there were nine cases she said: "You have to do something as I have told him that there had only been six." The social worker however refused to play any role in a "cover-up". The following day Amnesty International's representative interviewed Dr H.H., the general practitioner responsible for the medical care in this institution. Dr H.H. explained that he would be summoned by the staff to issue the death certificate, establishing the cause of death on the basis of "clinical data" provided by the staff on duty. In the seven years that he had been responsible for the home he had not requested any autopsy to be performed[93]. His claim that only a forensic expert can order a post-mortem examination revealed, if nothing else, poor knowledge of the regulations in force.

The case of Kostadin K.

Kostadin K. was 37 years old when he died in Radovets at 8.35am on 5 January 2001. Apparently Kostadin K. first manifested symptoms of "schizophrenia" in 1995 or 1996 while he had been working in Russia. The cause of death was registered as "sepsis resulting from *Bürger's* disease". However, his medical record contained no mention that he had been suffering from this disease or that Kostadinov's legs were not in a healthy condition. In fact, following an examination on 11 June 2000 it was noted that "the limbs had no deviation". At that time Kostadin K. had been placed in Terter, the social home which had been visited by the CPT in 1999 and which was closed down in late 2000. Kostadin K. was apparently again examined by a Dr Z. on 17 December 2000

[91] Later Amnesty International's representatives established that one of the deceased women was 69 years old.

[92] In June 2002, Amnesty International's representative was told that the total number of death in 2001 had been 14.

[93] Similar practice in case of a death of a resident was described in Razdol to Amnesty International's representatives. The nurse on duty who had been in the institution for over 28 years did not recall that a post-mortem had ever been carried out.

and a medical form issued at the time contained no reference to any acute condition. The following day he was transferred to Radovets, whose director remembered the following: "Kostadin K. appeared very ill [when he arrived]. He seemed to have frostbite on his legs. We received six men from Terter when it was closed down. They were all exhausted and we first gave them some good clothes. Some men were in very bad shape. Zlatko didn't even want to talk for five months. They were all medically examined when they arrived here." Zlatko Z. confirmed that Kostadin could not walk properly. "He walked like a duck", noted Zlatko Z., "making a lot of thumping noise. The pain gradually increased and he kept asking for medical assistance. His legs and feet were very swollen from the calves down. He wore rubber boots. It had been very cold in Terter but it was also cold here when we arrived. We were not examined immediately upon our arrival. When we came here he was just taken to a bedroom. He did not complain much until the day before he died."

The medical file noted that Kostadin K. had been examined on arrival in Radovets by a feldsher and there was still no mention of any somatic condition. Dr H.H., the general practitioner of the institution, stated that he had examined the six men from Terter on 19 December 2000 but did not record this. He remembered that Kostadin K. had been brought to Radovets with *Bürger* disease, that he had necrosis on the toes of one of his feet but could not remember whether of the left or right leg. He prescribed a large dose of antibiotics and rivenol. "Otherwise his general condition was good," the doctor stated. The medical file noted that the prescription for cebalexim was exchanged for medication on 2 January 2001, two weeks after Kostadin K. had been transferred to Radovets. Three days later he died. The medical record simply stated that on 3 or 4 January 2001 his condition deteriorated and that he suffered from a cardiac condition although there is no record of the method used to establish this.

When asked to comment on the medical protocol of the 17 December 2000 examination which did not contain any mention of *Bürger's* disease; whether it had not been his duty to question any errors in medical records of patients for whom he was responsible; and whether he thought that Kostadin K. had received adequate medical treatment, given the severity of his condition and the living environment in Radovets, Dr H.H. replied:

"Maybe I should have sent him to the hospital to be examined by a surgeon. However, his general health condition was good and no hospital would have admitted him in such a state."

The example of Dragash Voyvoda illustrates that records on deaths in social care homes are not reliably kept and that apparently this data is not systematically collected and published by the National Service for Social Assistance. The BHC first visited Dragash Voyvoda in September 2001 and were told that 12 men had died in January and February 2001, an unusually high figure given that the total number of residents was around 140. When Amnesty International's representatives visited Dragash Voyvoda on 24 January 2002 the director, who had been appointed in May 2001, could not give the number of deaths in 2001. Information received a week later from the Nikopol Municipal Service for Social Assistance stated that 17 residents of Dragash Voyvoda died in 2001, and three in 2002[94]. However, further research by representatives of Amnesty International and the BHC conducted on 1 and 2 April 2002 established that at least 22 male residents of Dragash Voyvoda died in 2001. Seventeen men died in the period between 1 January and 15 April 2001 and five men died in the period between 22 October 2001 and the end of the year.[95]

[94] Letter from Vanya Vincheva to the Head of the National Social Care Service dated 1 February 2002 which was made available to the BHC.

[95] No information was available for the last quarter of 2000, the beginning of the winter period which was described by the medical staff as an exceptionally severe one, or for earlier years with more severe winters. A nurse recalled that during the winter months six years ago (this could possibly have been the winter of 1995-1996, precise information was not available) there were 21 deaths which she attributed mostly to the lack of food and poor heating. In the same winter an orderly said that there had been 30 deaths but was then corrected by a colleague who said that in fact there had been 27 deaths that year. These figures could not be verified because the social worker was on leave.

It is indicative that no deaths had occurred from 15 April to 22 October 2001 in the course of the summer. The cause of death for the vast majority was noted as "acute heart and respiratory insufficiency". There appear to have been no investigations into any of the deaths of Dragash Voyvoda residents. The death of a resident, who got lost in the desolate landscape surrounding the institution and reportedly died from hypothermia in January 2002, is likely to have been subject of a preliminary inquiry by the local prosecutor, who would have been notified of the incident by the police. However, no information was available indicating that this inquiry led to a criminal investigation.

In February 2001 the director of the municipal service for social assistance apparently ordered that the bodies of three of the residents who died on 24 and 25 February should be subjected to post-mortem examinations. Dr Margarita Nikolova, the pathologist who conducted these examinations, explained that a proper diagnosis of their condition of severe pneumonia would have required no other means than a stethoscope. She observed that the clinical diagnosis of the cause of death was meaningless and at variance with the diagnosis established by the pathological examination, namely severe pneumonia and malnutrition. Given that 19 out of 22 cases appear to have similarly improper diagnoses of the cause of death, it raises the question of whether these 19 men may also have died from pneumonia. At the time of the April 2002 visit five more deaths had occurred in Dragash Voyvoda. Two cases which occurred in March 2002 had also been subjected to a post-mortem examination and although the final reports had not yet been issued at the time of their visit, preliminary findings seen by the representatives of Amnesty International and BHC indicated that these deaths were also caused by pneumonia and malnutrition. Dr Andreev, the physician who treated the two men who died in March 2002, stated that antibiotics for the residents of Dragash Voyvoda were not provided free of charge by the National Health Insurance, and that such medication had to be paid for by the residents themselves, as the institution's resources were very limited. He also confirmed that the conditions in the institution were not adequate for residents' treatment but could not explain why prompt and adequate treatment was not administered to these two men in a hospital or another more appropriate environment. In 2001 none of the other 2,500 patients whom he treated in the Nikopol municipality died as a result of pneumonia. In April 2002 the director of Dragash Voyvoda stated that she had 31 residents registered as suffering from some form of bronchial condition, 16 of whom had received a prescription for antibiotics but this was not administered because of lack of resources. [96]

Nezhdet S. - a telling record of medical negligence

Nezhdet S. died in Dragash Voyvoda on 21 March 2002, the day after his 49th birthday. According to the nurses interviewed ten days later Nezhdet S. had suffered from stomach troubles for a long time. It is interesting to note that this was the most important thing they remembered about his condition. The nurses further recalled that they had administered glucose transfusions in the institution and failed to mention that he had been treated with antibiotics for a severe form of pneumonia. They also claimed that Nezhdet S. had been examined by Dr S., the psychiatrist of the home, although it was not possible to examine any records of this examination to establish when it took place and what the findings were. A nurse stated that Nezhdet had been taken to the local hospital in Nikopol but released as "a hopeless case". She explained: "The hospital staff have a negative attitude to residents as they are not paying patients; they treat them reluctantly."

A detailed examination of Nezhdet S.'s medical file revealed a long and dubious course of medical treatment. On 8 February 2001, in the first of 17 entries over a period of about a year, it was noted that Nezhdet S.: "Refuses to eat. The general condition is deteriorating. Therapy: efortil [a medication to increase the blood pressure which is low when a person does not eat - this therapy treats the symptoms not the cause], vitamin C, glucose; chlorazin and achineton" [medication for his psychiatric condition diagnosed as schizophrenia]. The

[96] Lack of adequate medical treatment and substandard living conditions contributed to a high rate of tuberculosis among Dragash Voyvoda residents. In July 2001 nine residents were reportedly sent to a special hospital for treatment for tuberculosis but no information was available whether there had been further screening and whether anyone else had since been referred for TB treatment.

following day Dr R., then staff physician working in Dragash Voyvoda, observed that "the patient's general condition is good. Same therapy". However, the doctor also noted that he was suffering from "cardiac insufficiency". Ten days later this condition was described as "decompensation of heart function and myocardiosclerosis" and furanthril was prescribed. The BHC forensic medical expert who examined Nezhdet S. medical file noted that such medication may have been prescribed in order to treat the swelling of the legs which could have resulted from malnutrition. Another doctor, a visiting general practitioner from the municipality, who examined Nezhdet S. on 14 March 2001 did not confirm the heart function problems or the edema on the legs. It was therefore unclear why he prescribed that the previous medication should be continued. In the same period Nezhdet S.was also treated with antibiotics for "a viral infection".

On 5 February 2002 a fourth doctor, having prophylactically examined Nezhdet S. concluded that there was "no pathology of heart disease but that breathing is not good - a dry cough". No therapy, however, seems to have been prescribed. On 11 February 2002 a senior nurse noted that "the patient complains of abdominal pains and diarrhea. Acute gastroduodenitis". There was no record about the methods used to arrive at this diagnosis and no mention of a therapy to treat Nezhdet S.'s condition. On 28 February 2002 a senior nurse, in telephone consultation with Dr Andreev, prescribed a treatment of antibiotics for "bilateral broncho-pneumonia". The doctor also suspected that the patient was suffering from duodenal ulcer but it is not clear from the medical records on what basis such a diagnosis was established. On 6 March 2002 Nezhdet S. was admitted into the local hospital in Nikopol where he was reportedly examined by two general surgeons. One of them noted "no indications for acute abdominal surgery". The other observed that "the patient suffers from cachexia and cannot move [presumably this was the reason why his body weight was not measured and recorded in the file]". Nezhdet S. was apparently released from hospital on 8 March 2002 without an appropriate document (epicrisis)[97] but with simply a prescription for glucose, *solutio ringeri*, two types of antibiotics and refobradument (iron supplement). The medical file further stated that Dr A. suspected that Nezhdet S. suffered from acute gastroduodenitis, but once again it was not clear on what basis this diagnosis was made. The antibiotics for Nezhdet S.'s therapy were bought from his disability pension kept by the administration of the social home and he was treated in a secluded room. He died on 21 March 2002 while reportedly being washed by an orderly.

A specialist of the Pathology Department of Pleven School of Medicine where a post-mortem examination had been carried out, stated that the preliminary findings (the final report was to be completed after the histological examinations had been completed) established as the cause of death "bilateral confluent lobular pneumonia". The examination also confirmed that the deceased had suffered from cachexia [malnutrition] and chronic bronchitis. Nezhdet S. was buried on 25 March 2002 in an unmarked grave. Only the residents who buried him knew whose remains were resting there.

Amnesty International recommends to the Bulgarian authorities:

To ensure that all deaths of residents are thoroughly and impartially investigated and that the results are made public. If an investigation uncovers credible evidence that the death has resulted, directly or indirectly, from a criminal offence, those responsible must be brought to justice.

97 It is most unusual that Nezhdet S.'s medical file did not contain the appropriate hospital release document [epicrisis].

Incapacitation proceedings – guardianship

Amnesty International's concern:

Legal procedures for incapacitation and appointment of a guardian do not contain necessary safeguards to protect the interests of the person concerned.

Guardianship of people with mental disabilities is a matter of great interest for the institutions, which are responsible for their care. When a person with mental disability reaches the age of 16 he/she is entitled to a state disability pension. If this person has been placed in a social care home the institution receives 80 per cent of the disability pension. Twenty per cent remains for personal use of the resident but in fact this sum is used at the discretion of the institution either because it is in fact the resident's guardian, or the guardian who had placed the person in the institution, as is frequently the case, authorizes the social care home to dispose off these funds on behalf of the resident. In practice, staff in most institutions stated that this 20 per cent was used for the purchase of clothes, toiletries etc.[98] It is in the interests of the social care home directors to place the residents under guardianship to increase the institution's income. In fact representatives of Amnesty International were told that the Ministry of Labour and Social Policy had instructed all directors to initiate proceedings for the incapacitation of residents who did not have a guardian. It was not, however, possible to ascertain that such instructions had been issued in a written form.

The problem of incapacitation in homes for children with mental disabilities is more complex. As the disability payments vary depending on the degree of severity of the disability, it is in the interests of the administration of social homes that the residents are assessed with the most severe disability.

The process of incapacitation (i.e. declaring that someone is unable to independently engage in legal actions), which in Bulgaria practically always means full incapacitation[99], is initiated by a petition, to a court, of a family member, the public prosecutor or "a third person with a legal interest"[100]. The participation of the public prosecutor in the judicial proceedings is obligatory. The petition for incapacitation should enclose an expert, usually psychiatric, opinion concerning the disability of the person under review. The court will set a hearing, which would be conducted in the presence of the petitioner and the person whose incapacitation is sought. The court is obliged to examine the person concerned, either in the courtroom or, if such a person is incapable of attending the hearing, by visiting him /her "in the health institution".[101] Following the examination of the person concerned and a member of the family, the court may also hear testimony from an expert, usually a psychiatrist, and a representative of the municipal service for social assistance. The decision on incapacitation is communicated by the court to the municipal "guardianship authority". This body then appoints a guardian and a guardian council for the person concerned.

There is no legal obligation in Bulgarian law that the person who is the subject of the application should be represented by a lawyer or an independent body who would ensure that their interests are protected. There is also no legal requirement that incapacitation should be reviewed over the course of a lifetime of the person concerned. Although there is a statutory prohibition on the appointment as a guardian of a person "who

98 More serious concerns regarding guardians' management of the resident's property might arise in situations, albeit rare, when it is more substantial and earning income.

99 Partial incapacitation under the Bulgarian law does not in fact allow the person in question full independence in decision-making in all matters apart from specifically defined legal actions (for example: to dispose of the capital or to enter into marriage). Persons who have been declared "partially incapacitated" require a prior consent from a guardian for all legal actions.

100 Article 275 of the Civil Procedure Code.

101 After this examination the court may appoint a temporary guardian.

might have a conflict of interest with the ward" [102] the interpretation of this provision, observed during the visits to social care homes, does not exclude anyone connected to the institution where the person is in permanent residence, such as the staff of the social care home, whose income and employment may depend on the resident's continued care. The court decision to incapacitate a person can be appealed to a higher court but in practice this rarely if ever takes place.

The failure of the relevant Bulgarian legislation to provide regulations and procedure concerning incapacitation and guardianship, which would be in compliance with international standards, means that the rights of people with mental disabilities are frequently abused. A number of residents complained that their relatives had abused the incapacitation procedure at a time when they were in great mental distress because the relatives wished to control their property and assets. Subsequently, placed in a social care home, they had very limited contact with the outside word and found it impossible to engage a lawyer or draw the attention of the local prosecutor to assist them in initiating a review of their status. Information obtained from the social worker in Podgumer illustrated the nature of the incapacitation procedure and hearings. In the autumn of 2000 this social care home, following the reported instruction of the Ministry of Labour and Social Policy, initiated 27 procedures for incapacitation of the residents in their care. The social worker had herself participated in 25 of the court hearings, which took place in the social care home in the course of three days in June and July 2001. Present at these hearings were the judge and a court clerk, the prosecutor, and a psychiatrist who had been appointed by the court as an expert witness. The actual hearing for each person lasted 10 to 15 minutes or even less if the person who was subject to incapacitation could not speak. Not a single resident was represented by a lawyer. This is in violation of Articles 9 and 14 of the ICCPR. As already noted in this report the High Commissioner for Human Rights has herself noted the relevance of these two provisions to disabled persons who are institutionalized. It is important to note in particular the provision of Article 14(1) which, *inter alia,* states that: "in the determination… of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". The final stage - appointing the guardian - was still with the responsible municipal official at the time of the visit. The problem was that no one in the social care home wanted to be appointed as a guardian. The director reportedly claimed that he could not be considered as it would be incompatible with his duties and was trying to persuade younger members of the staff, nurses and orderlies.

Amnesty International recommends to the Bulgarian authorities:

To revise the Persons and Family Act and Civil Procedure Code provisions regarding incapacitation and the appointment of a guardian, ensuring that effective safeguards are in place to protect the interests and the basic rights of the person concerned. As a minimum these should recognize partial as well as full incapacitation and more precisely define conflict of interest as an obstacle to the appointment of a guardian. Procedural rules should contain obligatory legal representation of the person concerned and a mandatory periodic judicial review of the situation.

The case of Ivailo M.

Ivailo M., a 43-year-old man, was placed in Podgumer in March 1996. His parents, the father, who was an engineer, and mother, a pharmacist, died in 1986 and 1987 respectively. Ivailo M. continued to live in the family apartment in the centre of Sofia until the early 1990s when he sold it after not being able to pay for the utility bills. He then reportedly lived on the street but suffering from diabetes his left leg was amputated

[102] Article 116 of the Persons and Family Act states that: "The following cannot be appointed as guardian council members: persons who are minors or legally incapacitated, who have been stripped of their parental rights, convicted of serious premeditated crimes as well as persons who because of their illness, alcoholism, immoral life, self-interested conduct, or conflict of interest with the interest of the ward or because of other reasons cannot perform the duties of a guardian council member."

following gangrene. He was then placed in the Podgumer social care home, which commissioned his mental health assessment, by a clinical psychologist of a state psychiatric hospital. His IQ score of 95 was described as "lower end of average intelligence". However, he was subsequently assessed as "mildly retarded". Ivailo M.'s medical file confirmed that his current mental and physical state were both very good. His personal file, administered by the social worker in Podgumer, revealed that the Sofia Prosecutor, at the proposal of the Podgumer director, applied for Ivailo M.'s incapacitation on 4 December 2000. In the application the following were listed as Ivailo M.'s disabilities: "diabetes, left leg amputated due to gangrene, cachexia (malnourishment), oligophrenia". The prosecutor concluded that: "His inability to control his conduct seriously threatens to undermine his interests and therefore points to his incapacitation." The following were to be summoned to the court hearing to testify: Ivailo M. (there is no mention that a lawyer would be representing him), the director and the social worker of Podgumer. The following documents were submitted with the application for incapacitation: the director's request for the procedure to be initiated; the expert decision of TELK of 10/11/99; and an expert opinion of 29 August 2000. Copies of these documents were not kept in the personal file. When asked to explain why she thought that Ivailo M. had been assessed, in the course of these proceedings, as a person who should be legally incapacitated the social worker explained: "A normal person would not have sold his fine apartment and spent all the money on drink."

Supervision by state authorities

International standards stress the need for independent monitoring. The MI Principles require in Principle 22 that: "States shall ensure that appropriate mechanisms are in force to promote compliance with the present principles, for the inspection of mental health facilities, for the submission, investigation and resolution of complaints and for the institution of appropriate disciplinary or judicial proceedings for professional misconduct or violation of the rights of a patient."

The UN Committee on Economic, Social and Cultural Rights, in its General Comment on persons with disabilities also states that "the methods to be used by States Parties in seeking to implement their obligations under the Covenant towards persons with disabilities… include the need to ascertain through regular monitoring, the nature and scope of the problems existing within the state…".

Most specifically, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires in Principle 29 that "places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct form the authority directly in charge of the administration of the places of detention…". Furthermore, in paragraph 2 of the same Principle, it notes that "a detained… person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention…". These Principles are relevant because "detained person" is broadly defined in the section on "use of terms" as "any person deprived of personal liberty except as a result of conviction for an offence".

Social care homes are apparently regularly visited by the officials of the District Service for Social Assistance, which is directly responsible for the operation of these institutions, and by the municipal inspection services. Hygiene and Epidemiological Inspection is mostly concerned with the state of hygiene in the facility, particularly sanitation and the quality of the food prepared and/or served in the establishment. Their visits are reportedly fairly regular and frequent. The fire prevention inspection monitors mainly the heating installations and emergency fire extinguishing means which are obligatory. They usually visit twice a year, before and after the heating season. Both inspections issue recommendations but their subsequent enforcement usually depends on the ability of the municipality to provide required resources for their implementation. The municipal branch of the State Financial Control inspects regularly the financial management of social care homes.

The National Service for Social Assistance, which is established within the Ministry of Labour and Social Policy, approves the opening and closing down of social care homes and issues guidelines and minimum standards for their operation. The National Service for Social Assistance has an inspectorate whose role is to

check the implementation of the policy and standards. Its officials had not been to any of the establishments visited by the delegation. Medical services in social care homes are not subject to any specific regulations or inspections and are not considered to be within the brief of the Ministry of Health which does not consider these institutions to be part of the mental health care system.

In Cherni Vrh, Amnesty International's representative inspected the file containing reports of supervising state authorities in order to establish whether anyone had taken note of the seclusion and restraint practices in this establishment, which amounted to cruel, inhuman and degrading treatment. The District Service for Social Assistance inspection visited the social home on 8 June 2000 and concluded that "the moral and physical basis [of the social care home] are old and not appropriate". Recommendations concerned: construction of a food storage; records for prescriptions paid by the public health insurance; records of residents' rehabilitation; book-keeping for the 20 per cent of the disability pension of the residents managed by the staff. The same inspection returned in October 2001 when further recommendations were made concerning: GP and psychiatric consultations and records of rehabilitation of residents; personnel files; and a job description for the farm manager.

Summary of Amnesty International's Concerns

Amnesty International is concerned about the grave lack of respect for basic human rights of people with mental disabilities in Bulgaria. Some of their basic rights are systematically violated when being subjected to treatment against their will in psychiatric hospitals, or when placed for residential care in social care homes for children or adults with mental disabilities.

Many of these violations of basic human rights, arising from legal regulations and procedures which are not in line with international standards, or from the observed, widespread practices, such as the enforcement of seclusion or lack of rehabilitation and active therapy, amount to systematic discrimination against people with mental disabilities. There is a very high probability that any person with a mental disability in Bulgaria, because of their disability, would suffer some violations of his/her basic human rights.

Traditional attitudes to mental and physical disabilities in Bulgaria result in the social stigmatization and consequent discriminatory treatment of people with mental disabilities and their families. In view of its obligation under the provisions of ICCPR Article 2, the Bulgarian government has failed to sufficiently combat this kind of discrimination.

Psychiatric Hospitals

The living conditions in hospitals visited by Amnesty International's representative were inadequate and did not meet international human rights standards. Although psychotherapy and controlled pharmacotherapy were administered in these hospitals there was a notable lack of other opportunities for rehabilitation and therapy which are considered as essential by international standards.

Electroconvulsive therapy was administered in some institutions in its unmodified form (i.e. without the use of anaesthetic or muscle relaxant) which is regarded as poor practice by medical experts and contrary to international standards.

Hospital procedures for seeking and obtaining informed consent from patients placed for compulsory inpatient hospital treatment were inadequate and did not meet international standards.

Some patients in compulsory psychiatric treatment complained that they had been roughly, sometimes violently, treated by police officers, before they were admitted into the hospital. A number of patients also complained that orderlies, who sometimes exercised security-related tasks, resorted to violence or to excessive force.

Restraint and seclusion practices in psychiatric hospitals were not in line with international standards and in some instances amounted to cruel, inhuman and degrading treatment or punishment. There were no

protocols for, nor records kept regarding the use of restraint and seclusion. Seclusion was frequently enforced as a punishment. In some instances, when it concerned patients who were admitted for treatment on a voluntary basis, seclusion amounted to arbitrary deprivation of liberty and detention.

Legal regulations regarding placement for compulsory psychiatric treatment in Bulgaria did not provide sufficient guarantees of independence and impartiality. The Bulgarian authorities have failed to bring the legislation concerning placement for compulsory psychiatric treatment into line with the decision of the European Court of Human Rights in the case *Varbanov vs. Bulgaria*. There is still no statutory obligation for prosecutors to seek a medical opinion prior to a patient's placement for assessment in an inpatient facility. This is in violation of Article 5(1) of the ECHR which, according to the court's ruling, requires that any decision for detention, including the commitment for a psychiatric assessment, should be made following an opinion of a medical expert. Detention authorized by a prosecutor continued not to be appealable to a court, which was in violation of Article 5(4) of ECHR which guarantees the right to judicial review of the legality of detention. The Public Health Act also fails to make obligatory the legal defence of a person who is subjected to the placement procedure.

Furthermore, the legal criteria for involuntary psychiatric treatment under the Public Health Act as defined in Article 36(3) – that a person with a mental illness is "likely to perpetrate crimes constituting a serious danger to society or is dangerous to family members or others, or seriously threaten his/her own health" - are so broad and ambiguous that they allow for arbitrary interpretation. These criteria for placement require proof only of a probable action, without any specification whether such probability is short or long-term. However, it is recognized that modern psychiatry is unable to prove a long-term probability of dangerous behaviour. Secondly, the norm does not make clear what kind of danger the mentally ill should constitute to their family members or others.

Amnesty International is also concerned about the enforcement of Article 61 (3) of the Public Health Act which limits the time for an assessment in inpatient psychiatric hospitals to 30 days. A failure to observe this norm, which is reportedly not infrequent, would result in a violation of the right not to be arbitrarily detained.

Other failings to protect people placed for involuntary psychiatric treatment include:

- lack of any legal requirement or established practice in any of the psychiatric establishments visited to inform patients of their rights;

- contact with the outside world is difficult for most patients in hospitals, such as Karlukovo and Patalenitsa, which are far from the urban centres;

- there were no independent bodies to supervise the conditions and treatment in compulsory psychiatric treatment in Bulgaria or systems for filing and reviewing patients' complaints. Even the prosecutors, who are mandated to supervise the administration of the decisions for compulsory placement, apparently exercise this function with great irregularity.

Social Care Homes for Children

The placement of children into institutions are frequently based on unscientific diagnoses, not on a genuine assessment of the level of support which they require. Once 'labelled' they are seldom reassessed until the age of 16 when they qualify for a state disability pension. There are no rules, no procedures, no practice which would impose consistent monitoring and reassessment of the diagnosis by teams of specialists.

Poor living conditions prevailed in all social homes for children visited. State-allocated resources were reportedly inadequate for even basic maintenance of the facilities, provision of food, heat and clothing. Any

improvements depended on donations and the work of charitable organizations. Dormitories were overcrowded and in several places bare and in poor decorative condition, lacking any visual stimulation. Sanitary facilities were inadequate.

The children's contacts with parents were mostly completely severed and any contacts with the community extremely restricted.

None of the institutions visited were staffed or attended (even on an irregular basis) by the range of specialists required to conduct an appropriate rehabilitation program for children with developmental disorders.

Medical care was inadequate. With few exceptions there were no physicians in these institutions. General practitioners were often far away from the social care home. Treatment by specialists, including psychiatrists, rehabilitation and reassessment, was not a standard practice.

Lack of adequate treatment and rehabilitation for children impairs their development and the possibility of leading a more meaningful and useful life. If active and appropriate treatment is not started soon, these children will be permanently and severely affected. Amnesty International is concerned that depriving children with developmental disabilities in social care homes of thorough assessments, adequate medical care and appropriate rehabilitation amounts to cruel, inhuman and degrading treatment and thus violates international law, including Bulgaria's obligations under the Children's Convention, the ICCPR and the Convention against Torture.

Although reports of physical abuse of children are very rare, Amnesty International is concerned that they are not investigated promptly and impartially and that the investigations do not meet the requirements of the Convention against Torture. The organization is also concerned that the national authorities responsible for social care homes for children do not exert the necessary supervision of these institutions.

Social Care Homes for Adults

Substantive and procedural norms for placement in social care homes blatantly fail to meet requirements of international human rights standards and violate the rights to due process and freedom from arbitrary detention.

The living conditions in seven of the eight social care homes for adults with mental disabilities visited by Amnesty International amounted to inhuman and degrading conditions in violation of international law. None of the facilities were adequate for the purpose of caring for people with special needs.

Placing many of these institutions in very remote locations, some of which are unsuitable for all-year residential accommodations, appeared to be the result of a deliberate policy of isolating those with disabilities. Most of the buildings were in a poor state of repair. The level of neglect rendered some buildings derelict, filthy, and, in places, dangerous for the residents. Dormitories frequently contained large numbers of residents and few institutions had any space, even toilets, which afforded privacy. Night-tables or lockers where residents can store their property were rare. Electricity was centrally controlled and there was no possibility of using the lights in daytime.

In all the institutions visited residents were dressed in ragged clothing or old army uniforms.

All the homes were providing three meals a day, but many residents appeared malnourished and complained that the food was of poor quality and insufficient quantity. None of the homes visited kept weight and height records in the medical files of the residents. The dining rooms were no better than the dormitories or other facilities.

In many of the homes visited heating in winter months was grossly inadequate.

Generally, the toilet facilities were filthy and the stench was overwhelming. The bathing facilities were all crude, often broken and for many, inaccessible.

Residents in most institutions visited complained that they were sometimes ill-treated by certain orderlies.

All homes visited by Amnesty International resorted to the use of seclusion methods, usually imposed as punishments, which were cruel, inhuman or degrading and in violation of international human rights standards. No detailed records were kept of how and when seclusion and methods of restraint were used and it appeared that such ways of controlling residents' behaviour would be ordered by a nurse or an orderly.

The institutions visited were severely understaffed. Both medical and non-medical staff (orderlies) lacked appropriate training to work with people with mental disabilities. As already noted, most of the institutions were far from urban centres and it was therefore difficult for residents to receive appropriate medical care and for the institution to recruit staff that had appropriate training.

Most people were placed in social homes on the basis of diagnoses made long ago and of very dubious accuracy. Although these institutions were for people with various mental disabilities, the levels of staffing and the quality of staff training were dangerously inadequate. The role of psychiatrists in the care of residents was extremely limited. Psychiatric treatment in many institutions visited appeared to consist solely of the prescription of medication on the basis of data provided by the medical staff in the home.

Poor records of medical treatment as well as records of incidents in which residents suffered injuries were observed in most social care homes visited. Specialist medical and dental care were rare.

Psychotropic medication was openly used in the institutions visited to subdue behaviours which may well not have a psychiatric basis, but be due to distress and/or anger arising from the environment. The prescribing of drugs was not consistent with good medical practice in some institutions. There was no recognition of the residents' right to free and informed consent to medication. Storage of medication was not adequate in several institutions visited.

Medication was the only available therapy in most of the social care homes visited. Occupational therapy in most places consisted only of residents doing the menial work of the staff without any recompense.

In several institutions visited the staff appeared unwilling or unable to disclose information on the deaths of residents. In some institutions the mortality rates were high, particularly in years that had colder and longer winters. In most of the homes post-mortem examinations had never been performed nor had police or other authorities investigated the circumstances of deaths of residents. Records on deaths in social care homes are not reliably kept and apparently this data is not systematically collected and published by the National Service for Social Assistance.

Legal procedures for incapacitation and appointment of a guardian do not contain necessary safeguards to protect the interests of the person concerned. Representation by a qualified lawyer is not obligatory in the incapacitation proceedings. Judicial proceedings are reportedly frequently conducted in summary fashion and the court seldom if ever questions the medical expert opinion. Legal provisions which set criteria on who can be appointed as a guardian are vague and do not preclude the appointment of a social care home administrator or staff, which is frequently the case. There were reports that incapacitation procedures had been abused by family members or others. Once incapacitated there are no provisions for a periodic review of the situation. Those who were placed in a social home had very limited contact with the outside word and found it impossible to engage a lawyer or draw the attention of the local prosecutor to assist them in initiating a review of their status.

Supervision of social care homes by state authorities was sporadic and inadequate.

Amnesty International's Recommendations

People with mental disabilities who are held involuntarily in psychiatric institutions or in social care homes in Bulgaria suffer a broad range of human rights violations. The most effective way to address these violations is through enforcement of international human rights standards of particular relevance to people with mental disabilities as well as professional best practice. In fact the effective enforcement of many of these rights depends on a thorough and appropriate reform of the mental health care services. Similarly, a successful reform of the mental health care services would not be possible without putting in place all the safeguards for the protection of basic rights of people for whose full benefit these services should be designed.

International human rights standards recognize the need for a greater deinstitutionalization of people with mental disabilities and an increased capacity to support their integration into the community[103]. In this report, Amnesty International focused solely on the conditions in existing institutions in Bulgaria. Providing care within the community was not a priority within the Bulgarian system at the time of the organization's visits. However, this is one of the objectives of the National Program for the Mental Health of the Citizens of the Republic of Bulgaria 2001–2005, adopted by the Bulgarian authorities in June 2001. This program, however, fails to take into account social care homes for children and adults with mental disabilities because such institutions are not treated as part of the mental health care system. Therefore, Amnesty International urges the Bulgarian authorities to initiate a thorough review of all aspects of social care homes with a view to introducing a plan of substantial reform in the entire mental health care system in order to effectively address the inadequacies in all institutions which care for people with mental disabilities.

Amnesty International is making recommendations only with regard to concerns which have been identified in this report. The organization urges the Bulgarian authorities to respect their international human rights law commitments and to ensure that the basic rights of people with mental disabilities are effectively protected. All reform programs must meet international professional and human rights standards.

Amnesty International particularly urges the Bulgarian authorities to implement the following recommendations:

Public statement

To publicly acknowledge that the treatment and care of people with mental disabilities in many instances throughout Bulgaria is inadequate and that this situation will no longer be tolerated. Consistent with their commitment under the provisions of ICCPR Article 2, the Bulgarian authorities should undertake all the necessary steps to ensure that people with mental disabilities are not subjected to any form of discrimination. The Bulgarian authorities should also promote public awareness programs which would stress that people with mental disabilities have the same human rights as anyone else in the society.

Psychiatric Hospitals

Living conditions and treatment

To establish standards for inpatient living conditions and the full range of therapies to be provided to patients, which would be consistent with international standards. To ensure that these standards are maintained in all institutions providing inpatient psychiatric treatment.

[103] The Introduction appended to MI Principles in 1991 note at paragraph 6, "Facilities for the care, support, treatment and rehabilitation of persons suffering from mental illness should, as far as possible, be provided in the community in which they live. Admission to a mental health facility should therefore take place only when such community facilities are not appropriate or not available."

To establish regulations which would ensure that, following medical recommendation, electroconvulsive therapy is administered only in its modified form, in a way which meets international standards for best practice and in circumstances which would not be degrading to the patients and medical staff.

To establish regulations which would ensure that patients placed for compulsory inpatient hospital treatment are informed of their rights and that they can effectively exercise their right to free and informed consent to medication in a manner which would be consistent with international standards.

Ill-treatment, restraint and seclusion

To require medical examination of all patients in compulsory psychiatric treatment on their admission and to refer reports of any injuries observed, including any relevant statement made by the person concerned and the doctor's conclusions, to the public prosecutor in charge. To assist any patient claiming that they had been subjected to police ill-treatment during their admission into hospital to file complaints to the public prosecutor.

To establish regulations which would ensure that all patients are informed about their rights on their admission into a psychiatric establishment for inpatient treatment.

To ensure that patients' contact with the outside world is not restricted, particularly if the establishment is located far from urban centres. For example: all patients on compulsory treatment should have access to a public telephone; patients should be treated in hospitals close to their place of residence or where their families live.

To ensure that public prosecutors regularly visit wards for patients who are placed for compulsory inpatient psychiatric treatment.

To ensure that all orderlies, including those who carry out security-related tasks, are adequately trained for work in the establishment and specifically trained in appropriate methods of restraint of patients exhibiting violent behaviour.

To establish a system for filing patient complaints and an independent mechanism which would have the authority to maintain an oversight of the conditions and treatment in compulsory psychiatric treatment, as well as to review all patient complaints concerning staff conduct and hospital treatment. It would make appropriate recommendations, including referring complaints to authorities responsible for investigation of criminal offences. A complainant should be transferred out of the control of the alleged perpetrator while the complaint is reviewed.

To ensure that restraint and seclusion practices, which should be prescribed or authorized by a doctor, supervised by medical staff and strictly restricted in duration, are in line with international standards, particularly prohibiting the use of seclusion as a punishment. To provide guidelines for all inpatient psychiatric establishments on protocols for and keeping of special records (as well as in the resident's file) concerning the use of restraint and seclusion and to monitor that they are effectively maintained.

Placement provisions

To amend legal regulations regarding placement for compulsory psychiatric treatment and bring these into line with international human rights standards. Procedural norms should be amended to fully take into account the European Court of Human Rights decision in the case *Varbanov vs. Bulgaria*. The substantive norms concerning criteria for placement for compulsory treatment (Public Health Act, Article 36(3)) should be revised to prevent arbitrary detention. Compulsory treatment should not be considered unless it is necessary to prevent **immediate and present** danger to the health or safety of such a person or to protect others. Patients should have the right to seek a second opinion on their treatment.

To ensure that time limits for judicial review of placement as well as for psychiatric assessments in inpatient psychiatric establishments are respected by all authorities concerned.

Social Care Homes for Children with Mental Disabilities

Placement

To ensure that the placement in these establishments is based on a professional assessment of the child's impairments and the required level of support. To ensure that the child is consistently monitored and regularly reassessed by an appropriate team of specialists. To ensure that all children already placed in social care homes are periodically reassessed and ensure that they are cared for in the most appropriate institution.

Living conditions

To improve living conditions in all social homes for children and bring them into line with international standards. To ensure that sufficient resources are allocated to all establishments for the adequate provision of food, clothing, heating and maintenance of the facilities.

Contacts with parents and the community

To ensure that any child considered for placement in an institution, maintains links with the family by encouraging and facilitating, wherever possible, close contacts between the parents and their child. To initiate a comprehensive policy which would ensure that children already placed in social care homes develop, to the greatest extent possible, contacts with the community.

Professional care

To ensure that each child with developmental disorders has an individualized rehabilitation and training program; to ensure, as a matter of greatest urgency, that all children already in institutions receive active and appropriate treatment based on individualized assessment of their developmental needs. These objectives can be accomplished only if all institutions caring for children with mental disabilities are staffed by the full complement of required specialists.

To ensure that medical care in social care homes for children is adequate and that monitoring and regular assessment by medical specialists is a standard practice.

Monitoring

To set up an independent monitoring mechanism for children in social care homes. This body would maintain an oversight of conditions and care as well as ensure that the responsible municipal and national authorities are exercising their statutory supervisory functions, including their responsibility to promptly and impartially investigate any ill-treatment complaint.

Social Care Homes for Adults with Mental Disabilities

Placement

To review the placement of all residents of social care homes and ensure their rights to due process and freedom from arbitrary detention have not been violated.

To establish substantive and procedural legislation which would regulate placement in social care homes and ensure that these provisions are in line with international law standards.

Living conditions

To significantly improve living conditions in all institutions particularly where these amount to inhuman and degrading treatment in violation of international law, and to ensure that institutions are structurally safe and protected from fire and other hazards. To establish standards for living conditions and treatment appropriate for

the purpose of caring for people with special needs. To effectively exercise supervisory functions and ensure that the set standards are respected and maintained.

As a matter of utmost urgency, to ensure that each resident is provided with the following:

- a bed with a mattress, blankets and sheets, which would be cleaned in an appropriate way and at regular intervals;

- basic personal hygiene items such as towels, soap, toothpaste, toothbrush and toilet paper;

- ready access to clean and adequate toilets and bathrooms, where they should be able to take a shower at least once a week; the most vulnerable residents should be appropriately supervised and assisted by staff in maintaining their personal hygiene in a dignified manner;

- clothing and shoes, including socks and underwear, appropriate for the season and the resident's size which would be cleaned and returned to the resident at regular intervals;

- three meals daily that are of good quality and sufficient quantity;

- a dining room equipped with chairs and/or benches in sufficient numbers; each resident should be provided with appropriate eating utensils and allowed sufficient time to finish the meal; staff should ensure that the most vulnerable residents are able to take their meals under supervision and in decent conditions;

- ready access to appropriate food and drink between meals;

- materials for recreational activities, including writing materials, books, newspapers, games etc.;

- living quarters which are adequately heated.

Ill-treatment complaints and safeguards

To instruct all non-medical staff, particularly orderlies who are also performing security-related tasks, to respect the rights of residents and to make clear that physical or psychological ill-treatment of residents is not acceptable and will be subject to severe sanctions. To ensure that all staff are adequately trained to work in social care homes and that all non-medical staff are closely supervised by qualified health care staff.

To publish a brochure setting out residents' rights and the social care home's routine, which would be issued to residents on their admission, as well as to their families. Any resident unable to understand this brochure would receive appropriate assistance.

To establish an independent monitoring body which would receive on a confidential basis complaints from residents, and have the authority to talk to them privately. This body would also be authorized to monitor conditions and treatment in the social care home, to visit the facilities unannounced, to make necessary recommendations and to initiate legal action against any illegal practices.

Restraint and seclusion

To ensure that any method of restraint and seclusion, which should be prescribed or authorized by a doctor, supervised by medical staff and strictly restricted in duration, is consistent with international standards regarding cruel, inhuman and degrading treatment and regarding care of persons with mental disabilities, and to particularly ensure that seclusion is not used as punishment. To provide instructions for all social care homes on protocols on and special records (as well as in the resident's file) concerning the enforcement of restraint and seclusion and to monitor that they are effectively maintained.

Medical care and qualified staff

To ensure that social care homes are staffed by a sufficient number of medical and non-medical personnel appropriately trained for their role.

To ensure that psychiatric diagnoses of all residents are periodically reassessed and residents subsequently appropriately placed or released. All residents should regularly be attended by, and have easy access, to a psychiatrist. Any prescription of medication should be in accordance with the rules of the profession and standards of the Ministry of Health, which should be made responsible for the supervision of all medical services in social care homes. The ministry should issue strict instructions on the storage and use of medication, particularly psychotropic medication, and ensure effective safeguards against any abuse of such medication. These instructions should also explicitly acknowledge the residents' right to free and informed consent to medication consistent with international human rights standards.

To ensure that all residents undergo a full medical examination on admission. Any findings suggesting episodes of assault or other ill-treatment or neglect should be reported to the investigative authorities. Medical records should contain a comprehensive diagnostic record as well as an ongoing record of the patient's mental and physical state of health and of the treatment. Information about any injury suffered should be recorded in the medical file as well as in a specific register and be subject to an inquiry. Specialist medical and dental care should be prompt and accessible. The personal medical file should contain the resident's weight and height records which should be maintained at regular intervals.

To ensure that active therapy in accordance with international standards is provided to all residents. Any resident who is able and willing to assume some of the work which would otherwise be performed by staff should receive for this appropriate remuneration.

Deaths in social care homes and mortality rates

To ensure that all deaths of residents, wherever these may have occurred, are properly recorded in social home registers and that post-mortem examinations are carried out in all instances. To ensure that all deceased residents whose remains are not claimed by the family are given a dignified burial and their graves marked appropriately.

To ensure that information on mortality in social care homes is collated at the national level and published. Any institution with a significantly higher mortality rate than usual should be thoroughly investigated.

To initiate thorough and impartial investigations into all deaths of residents described in this report, to make public the results and to bring to justice anyone suspected of having committed a criminal offence.

To ensure that all deaths of residents are thoroughly and impartially investigated and that the results are made public. If an investigation uncovers credible evidence that the death has resulted, directly or indirectly, from a criminal offence, those responsible must be brought to justice.

Guardianship

To revise the Persons and Family Act and Civil Procedure Code provisions regarding incapacitation and the appointment of a guardian, ensuring that effective safeguards are in place to protect the interests and the basic rights of the person concerned. As a minimum these should recognize partial as well as full incapacitation and more precisely define conflict of interest as an obstacle to the appointment of a guardian. Procedural rules should contain obligatory legal representation of the person concerned and a mandatory periodic judicial review of the situation.