



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF D.L. v. BULGARIA

(Application no. 7472/14)

JUDGMENT
(Extracts)

STRASBOURG

19 May 2016

FINAL

17/10/2016

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of D.L. v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President*,

Ganna Yudkivska,

Khanlar Hajiyeu,

André Potocki,

Yonko Grozeu,

Síofra O’Leary,

Mārtiņš Mits, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 19 April 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 7472/14) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, D.L. (“the applicant”), on 16 January 2014. The application was received at the Court on 22 January 2014. The Court decided of its own motion to grant the applicant anonymity (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms D.N. Fartunova, a lawyer and member of the Bulgarian Helsinki Committee (a non-governmental organisation based in Sofia). The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicant alleged that her placement in a correctional boarding school (*възпитателно училище – интернат*) had been in breach of Article 5 § 1 of the Convention and that she had been unable to have it reviewed by a court at regular intervals in accordance with Article 5 § 4 of the Convention. She also complained, under Article 8, of the automatic monitoring of her correspondence and telephone calls at the correctional boarding school in which she had been placed.

4. On 17 November 2014 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1999 and lives in Pleven.

A. The applicant's placement in a correctional boarding school

6. On 2 August 2012 the applicant, aged 13, was admitted to the Open Door children's crisis centre in Pleven. Her placement was ordered as a protective measure under the Child Protection Act by the Pleven municipal director of social assistance, at the request of the applicant's mother, who had claimed to be unable to look after her daughter.

7. In a decision of 1 October 2012 a criminal bench of the Pleven District Court (*Районен съд*) confirmed the applicant's placement and extended its validity for a further three months. In its reasoning the court found that the conditions for the placement of a minor in a specialist institution were satisfied, namely that the child's parents were unable to provide her with adequate care and that she was living in a dangerous social environment, as she associated with "men identified as delinquents". Lastly, it stated that no member of the applicant's family was able to take on responsibility for her upbringing.

8. On 16 January 2013, finding that the conditions for the applicant's return to her family environment were not satisfied, the municipal director of social assistance ordered the extension of her placement in the centre. On 1 April 2013 a civil bench of the District Court in turn confirmed the measure and extended it for a further six months.

9. On 3 April 2013 the local committee for combating juvenile antisocial behaviour ("the local committee") asked the District Court to order the applicant's placement in a correctional boarding school. On 19 April 2013 a criminal bench of the District Court held a hearing, following which it gave a decision imposing a less severe educational measure on the applicant, namely "a ban on meeting and making contact with certain individuals". In its reasoning the court specified that placement in a correctional boarding school was liable to have a negative impact on the child's psychological and social development, given the "unfavourable environment offered by that type of institution". It added that following the expiry of her placement in the Open Door centre, it would be appropriate to admit the applicant to another institution regulated by the Child Protection Act in order to keep her away from the people who had forced her into prostitution.

10. On 17 May 2013 the local committee sent the District Court a new proposal for the applicant's admission to a correctional boarding school under the Juvenile Antisocial Behaviour Prevention Act. It argued that the applicant did not have a favourable family environment and that, in

particular, her father was serving a prison sentence and her mother had trouble assuming her parental responsibilities. This had caused the applicant to run away from home and develop a circle of friends including both adults and juveniles who were identified as “delinquents” and had allegedly incited her to engage in immoral conduct, such as the provision of “sexual services”. Lastly, the local committee noted that the applicant had also run away twice from the children’s crisis centre and had behaved aggressively towards the staff.

11. On 10 June 2013 a criminal bench of the District Court held a hearing. The applicant’s mother was present, having been summoned to appear at the hearings, and asked to have a lawyer officially appointed to represent her daughter in the proceedings. The applicant also asked to have a lawyer appointed. The court granted their request. It heard evidence from the applicant, her officially appointed lawyer, a representative of the local committee, an inspector from the child protection team (*Детска педагогическа стая*), a representative of the district prosecutor’s office, a representative of the municipal child protection department and two social workers from the children’s crisis centre where the applicant was living. The inspector from the child protection team stated that the applicant engaged in prostitution and had been found offering prostitution services on a motorway near Devnia, some 270 km from her home town. The two social workers from the children’s crisis centre pointed out that that factor had served as a ground for placing her in the centre as a protective measure for a child at risk. They added that after her admission to the centre, the child had remained in contact with the people who had incited her to engage in prostitution despite the steps that had been taken to protect her. In the social workers’ opinion, the applicant’s family environment was unsuitable for her. She came from a large family where the mother did not exert any parental control. The mother did not have a job and her partner drank and was violent towards her and her children. The mother had also stayed at the children’s crisis centre with two of her other children. After intensive psychological and social counselling, a positive development had been noted in the applicant and there were plans to find different accommodation arrangements for her. However, the social workers added that by the time of the hearing the applicant’s situation had worsened as she did not follow the rules in place, came back late from school or was brought back by the police when she failed to return, and continued to associate with individuals known to the police, to engage in sexual relations and to behave aggressively towards the staff. She had attended a series of talks on prevention of “lover boy”-type human trafficking but had not been receptive to the protective measures recommended. The social workers expressed the opinion that the applicant faced a strong risk of being driven into prostitution and that the arrangements in place at the crisis centre did not afford her the necessary protection. In their view, such protection would

only be provided in a secure centre with a restrictive regime. Lastly, the representative of the local committee stated that four educational measures had already been imposed on the applicant, including strict monitoring by a supervisor, the ban on associating with certain individuals and the warning recommending placement in a correctional boarding school. He viewed those measures as insufficient.

12. The court also obtained welfare reports. The applicant stated that she did not wish to be admitted to a correctional boarding school and preferred to remain in the children's crisis centre. The officially appointed lawyer called for the adoption of less severe educational measures. The representatives of the district prosecutor's office and of the municipal child protection department supported the proposal by the local committee. The representative of the municipal child protection department stated that during the hearing all the safeguards laid down in the Child Protection Act had been observed. In his opinion, the possibilities for the child's upbringing in the crisis centre had been exhausted, the risk of her renewed involvement in human trafficking was very high and she was unaware of this. Accordingly, the measure of placement in a correctional boarding school was in fact in her interests.

13. Later on 10 June 2013 the District Court gave a judgment ordering the applicant's placement in the correctional boarding school in Podem ("the Podem school"), a village 20 kilometres away from Pleven. In its reasoning the court held that despite the judicial decision of 1 April 2013 in which a compromise solution had been adopted for the applicant, namely the confirmation and extension of her placement in the children's crisis centre, she was still failing to abide by the institution's internal rules, was not returning to the centre by the designated time after school, was in contact with individuals identified as "delinquents" and was still behaving rudely and aggressively towards the social workers at the centre. It noted that, in the absence of adequate parental control, the applicant had developed serious antisocial habits and that her placement in a children's crisis centre no longer had the intended educational and preventive effect on her behaviour. In the court's view, the applicant no longer displayed any willingness to abide by the rules of society, or even those of the institution in which she was living, and it was therefore advisable to remove her from her circle of acquaintances who were harming her personal development, and to provide her with enhanced educational support in order to eradicate her negative behavioural traits. The court noted that educational measures had already been imposed on her, but they had not produced a positive result. It concluded that the measure of admission to a correctional boarding school was necessary not only for her own benefit but in the interests of society.

14. The applicant, represented by her lawyer, appealed against that judgment. She challenged the measure imposed on her, arguing in particular

that the court had not specified its duration, that her mother had not been given a hearing by the first-instance court and that she herself had not committed any criminal acts.

15. In a final judgment of 16 July 2013 a criminal bench of the Pleven Regional Court upheld the first-instance court's decision. In its reasoning it held that the law did not oblige the court to hear evidence from the parents – in this instance the applicant's mother – and that the applicant's other complaints were unsubstantiated and ill-founded.

16. On 13 September 2013 the applicant attempted to commit suicide and was admitted to the toxicology department of Pleven Hospital. According to a medical certificate dated 15 September 2013, she had taken ten 500 mg paracetamol tablets and ten Remotiv tablets and was in a fragile state. After her stomach was pumped, the effects of the intoxication were brought under control.

17. On 15 September 2013 the applicant was taken to the Podem school. She was still there at the time of the most recent information submitted to the Court, on 11 June 2015.

18. Regarding life at the school, the applicant submitted in her application that the level of teaching was much lower than at her previous institution. In the four years prior to her application, only six pupils had obtained the secondary-school leaving certificate, and none at all in 2011 or 2012. Three pupils had been awarded the certificate in 2013 with an overall average mark of 3.67 out of 6, the minimum pass mark being 3. The applicant added that in 2012 and 2013 the pedagogical council had not given any positive assessments of pupils' behaviour or school results, meaning that no proposals for the end of a placement had been submitted to the District Court.

19. The applicant also asserted that she had continued to be threatened with forced prostitution by her former contacts after being admitted to the Podem school. On 19 November 2013 she had attempted suicide for the second time, as part of a group with four other girls, by ingesting chemical substances. She had then been taken to hospital for three days. There had been other suicide attempts at the school.

20. The applicant further submitted that her telephone conversations were monitored by a supervisor. For that purpose, a loudspeaker had been attached to the telephone and switched on during each conversation.

21. In addition, because of the significant number of violent incidents at correctional boarding schools, the prosecutor's office on 7 November 2013 ordered an inspection of all secure educational institutions, including the Podem school. The results of the inspection are not known.

B. Report by the head of the Podem correctional boarding school

22. When submitting their observations on the admissibility and merits of the application, the Government included a report dated 30 January 2015 by the head of the Podem school about the applicant's situation. According to the report, during her previous placement in the Open Door centre, the applicant had been aggressive towards the staff, had encouraged other girls to engage in prostitution and had run away on two occasions (4 and 27 February 2013). The report also stated that she had unashamedly admitted to having been sexually active since the age of 12 and that she provided "sexual services" in return for payment.

23. The report mentioned, in addition, that the applicant did not have a favourable family background and that she was left unsupervised, which explained why she had previously run away and led a vagrant lifestyle.

24. According to the report, the Podem school offered an educational environment with experts qualified to work as teachers or supervisors in accordance with the requirements of the Ministry of Education and Science. The school curriculum and the courses followed in all specific subjects had been developed and approved in line with the Ministry's standard procedures. The applicant had been deficient in many areas and the teachers had worked with her on a one-to-one basis as well as during lessons.

25. The file does not include a copy of the individual development plan that was supposed to have been drawn up at the time of the applicant's admission to the school and updated every six months. However, according to the report, the plan indicated that she was unaware of the risks she ran on account of her "erratic sexual relations", that she did not question the consequences of such acts and that she was not ready to live independently. It added that she was naïve, easy to manipulate, impulsive, emotionally fragile and prone to dishonesty.

26. The report went on to state that the individual plan as updated on 29 September 2014 noted a positive change in the child's behaviour. Although she did not apply herself consistently, she had nevertheless shown some interest in schoolwork. The individual plan had recommended that she step up her efforts to acquire knowledge on an ongoing, in-depth basis.

27. The report also noted that at the end of the 2013/14 school year, the applicant had achieved an average mark of 3.69 out of 6 and had therefore moved up to the next class, that she had also been awarded a certificate as a qualified seamstress and that she would be receiving a similar mark for the first semester of the 2014/15 school year.

28. With regard to the applicant's telephone conversations, the report explained the applicable rules and stated that she had not been "deprived of telephone contact with her mother" or subjected to any restrictions on visits from her family, even though these had often taken place outside the times specified in the school's internal rules. In addition, the applicant had never

received any letters or parcels from her family. She had gone on home leave five times during the school holidays, from 21 December 2013 to 5 January 2014, from 30 January to 4 February 2014, from 28 March to 6 April 2014, from 4 July to 15 September 2014, and from 19 December 2014 to 4 January 2015. Each time, the applicant had returned late to the Podem school.

29. The report also stated that according to information from the police, the child had been suspected of stealing a mobile phone and jewels from a house on 4 January 2014. On being questioned by the police, she had handed over the items in question of her own accord.

30. Lastly, the report noted that the school's committee on preventing the risks of assault and harassment of juveniles had not received any information to suggest that the applicant had been "sexually exploited" within the school itself.

C. Reports by the State Agency for Child Protection and Action Plan for the implementation of the national policy strategy on juvenile justice for 2013-2020

31. Two reports issued in 2009 and 2013 by the State Agency for Child Protection include a summary of the findings of an assessment of the operation of the four correctional boarding schools in Bulgaria, including the one in Podem. They indicate that these schools had a total capacity of 405 places and that in 2013 there were 166 children attending them. There were 44 girls at the Podem school, all of whom had been admitted under the Juvenile Antisocial Behaviour Act.

32. The reports also note that there is a high pupil turnover rate during the school year because of the admission of juveniles on the basis of a placement order and because of their departure, in most cases on reaching the age of majority (18 years of age) or on the expiry of the statutory maximum duration of the placement. During 2009, twenty children ran away from the schools and eight left them following a positive annual assessment by the pedagogical council. During 2012/13, fewer than four children had a positive assessment and were therefore able to leave the correctional boarding schools. During the 2013/14 school year, there were no instances of children leaving the schools following a positive assessment. As regards the results achieved across all secure educational institutions in Bulgaria, the reports indicate that in 2009, 10% of pupils were awarded a vocational qualification, 35% successfully completed their secondary education up to the age of 14 and 3% successfully completed their secondary education up to the age of 18. The remaining 52% of pupils failed to complete their education. The 2013 report mentions a low success rate among pupils, with average marks of between 3 and 4 out of 6. According to the reports, these figures point to a problem as to the effectiveness of

educational and rehabilitative measures, and even raise questions as to whether “such measures exist in practice”.

33. The reports further state that, in accordance with the applicable legislation, each correctional boarding school has a team responsible for educational and psychological assessment of pupils and a team of supervisors responsible for educational and rehabilitative support. The teams draw up annual individual plans for pupils, which in most cases are set out in a standardised form. Objectives relating to learning, education and development are general in nature and do not include any specific activities tailored to the individual needs, abilities, age and interests of the children concerned. The 2013 report is particularly critical of the prevalence of serious incidents involving suicide attempts or assaults on other pupils, and deplores the fact that no provision is made for follow-up action in the individual plans of the pupils concerned so that consideration can be given to the reasons for their actions and to their psychological state.

34. In addition, the reports note that the staff of the institutions concerned have undergone training covering matters such as alternative education methods for children in difficulty, development of their potential for autonomy and catering for individual needs. With regard to the Podem school in particular, the teaching and support staff are subject to external educational supervision. The reports nevertheless conclude that the number of people employed to run extracurricular activities is insufficient, although the children’s wide-ranging needs and their vulnerability suggest that educational activities should be arranged in small groups. They also criticise the lack of any programme to foster closer relations between children and their families.

35. Two types of problems are highlighted. The first type concerns the school curriculum and the second concerns the programme for social integration and rehabilitation.

36. Regarding schoolwork, the reports note, among other things, that illiteracy levels are a cause for concern, particularly as children of a wide range of ages and abilities are grouped together in the same class. A large number of pupils are unable to read or write on their arrival at the schools, and the curricula taught do not allow them to redress their shortcomings and make progress. Furthermore, many children with behavioural difficulties also encounter problems at school and the development of their ability for effective learning and independent work is impaired. These children often run away, do not attend lessons regularly and have insufficient contact with adults.

37. As far as the programme for social integration and rehabilitation is concerned, the reports state that, in addition to staff shortages, the existing groups of more than seven or eight children in difficulty cannot be effectively supervised, the activities on offer do not follow an appropriate methodology for vulnerable children, and no arrangements are made at the

institutions to encourage contact between the children and their families, a shortcoming identified as a cause of aggressive behaviour.

38. Lastly, the 2009 report recommends in particular: (a) a general reform of the status of the institutions in question and of their operation, through the inclusion of alternative educational and preventive methods; (b) the introduction and development of units for preventing deviant behaviour, and their involvement as soon as children display the first signs of such behaviour; (c) shorter placements, with more emphasis on social rehabilitation and psychological support for children than on teaching; (d) returning the children in question to the ordinary school system, including in schools in their home area, rather than keeping them apart in specialist institutions, through an intensive individual integration scheme managed by teams of educational experts; (e) the introduction of programmes allowing young people to acquire vocational skills; (f) instilling an atmosphere of cooperation with families; (g) a reform whereby local committees for combating juvenile antisocial behaviour would no longer have a decisive role in taking educational measures and such decisions would be taken by a specialist judge alone; (h) abolition of punishments for juvenile antisocial behaviour; (i) abolition of criminal penalties for children under 14 years of age and their replacement by exclusively social and protective measures, applicable only in exceptional cases; (j) admitting children under 14 years of age to specialist institutions only where there is a social need or a need for protection; and (k) closure of the institutions in question, subject to the introduction of alternative protective and judicial measures in legislation and practice.

39. It appears that, following the 2009 report by the State Agency for Child Protection, the Ministry of Education and Science undertook to reform the secure institutions for juveniles in order to ensure that the system was entirely focused on the child and offered an individually tailored approach. Measures were subsequently put forward in an action plan for the implementation of the national policy strategy on juvenile justice for 2013-2020. Among the measures envisaged were: the repeal of the Juvenile Antisocial Behaviour Act and the introduction of a new Juvenile Justice Act for children in conflict with the law, with the aim of offering a wide range of social, educational and learning services to children in difficulty.

...

THE LAW

59. The applicant complained that her placement in a correctional boarding school had not been in accordance with Article 5 § 1 of the Convention and that she had been unable to have that measure reviewed by

a court at regular intervals, as provided for by Article 5 § 4. She added that the automatic monitoring of her correspondence and telephone calls at the correctional boarding school in which she had been placed was in breach of Article 8 of the Convention.

...

II. MERITS

A. Alleged violation of Article 5 § 1 of the Convention

64. The applicant alleged that her placement in a correctional boarding school infringed Article 5 § 1 of the Convention, the relevant parts of which read:

“1. 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:

(a) the lawful detention of a person after conviction by a competent court;

...

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

...”

1. The parties' submissions

65. The applicant submitted that, in view of the living conditions at the Podem school and her admission to the school against her and her mother's wishes, the measure in question amounted to deprivation of liberty.

66. Next, she contended that the Juvenile Antisocial Behaviour Act was not sufficiently clear and foreseeable as to its application. Neither the Act nor the domestic case-law defined the term “antisocial behaviour” ... sufficiently precisely for her to have been able to foresee that her behaviour would result in her being deprived of her liberty. She also disputed the authorities' finding that she had committed acts falling within the scope of this legislation; in her view, her situation was more that of a child at risk who required protective measures. Furthermore, the Act did not give a clear indication of the order in which educational measures were to be applied or of the educational institution that would be the most suitable in view of her alleged acts. In addition, her admission to the Podem school had not been ordered as a last resort.

67. The applicant submitted that she had been subjected to a criminal sanction and that her deprivation of liberty could therefore, on the face of it, be treated in the same way as the situation covered by Article 5 § 1 (a) of the Convention. Since, in her submission, her deprivation of liberty had not

been effected in accordance with the applicable criminal procedure, it had to be regarded as breaching that provision of the Convention. Nor was her placement in the school compatible with Article 5 § 1 (d) of the Convention, seeing that she had not had access to a system offering adequate education and support at the Podem school and had not been properly protected against the exploitation to which she had previously fallen victim and which had formed the basis for her placement in the school.

68. The Government did not dispute that the impugned measure amounted to a deprivation of liberty. Ruling out the applicability of Article 5 § 1 (a), they contended that the measure in issue corresponded to the situation contemplated in Article 5 § 1 (d). They gave a detailed account of the system of support and education offered at the Podem school. They added that the decision to admit the applicant to the school had been taken in the context of adversarial judicial proceedings that had included an examination of the factual circumstances and that her behaviour had been found to be antisocial under the applicable legislation. The measure had also been justified by the need to correct the applicant's behaviour through education and to remove her from an unfavourable social environment. The most severe educational measure, namely placement in a secure institution, had been chosen because of the failure of other, less restrictive measures that had previously been imposed on the applicant.

2. The Court's assessment

69. The Court notes at the outset that the Government did not dispute that the applicant's placement in the Podem school amounted to deprivation of liberty within the meaning of Article 5 of the Convention. In any event, it notes that it has already examined a similar placement in the institution in question and concluded that such a measure had deprived the children concerned of their liberty, considering in particular the system of permanent supervision, the need for permission in order to leave the premises and the duration of the placement (see *A. and Others v. Bulgaria*, no. 51776/08, §§ 62-63, 29 November 2011). Since this system remains unchanged, the Court sees no reason to depart from that finding in the present case and concludes that the applicant's placement in the school likewise amounted to deprivation of liberty.

70. The applicant contended that her placement did not fall within any of the situations contemplated in Article 5 § 1, in particular those covered by sub-paragraphs (a) and (d). The Government, for their part, submitted that Article 5 § 1 (a) was not applicable in the present case, but that the measure complained of was in accordance with Article 5 § 1 (d). As a result, and bearing in mind that that provision was applied in relation to the placement considered in the case of *A. and Others v. Bulgaria* (cited above), the Court will focus firstly on whether the applicant's placement in the Podem school was in accordance with Article 5 § 1 (d).

71. It observes in this connection that the first part of Article 5 § 1 (d) provides for deprivation of liberty in a minor's own interests regardless of whether the minor is suspected of having committed a criminal offence or is simply a child "at risk". It allows for the detention of a minor where this has been ordered for the purpose of educational supervision (see *A. and Others v. Bulgaria*, cited above, § 66). Since the applicant did not reach the age of majority during the application of the measure in issue, the only question for the Court is whether her detention was lawful and was ordered "for the purpose" of her educational supervision (see *Bouamar v. Belgium*, 29 February 1988, § 50, Series A no. 129; *D.G. v. Ireland*, no. 39474/98, § 76, ECHR 2002-III; and, more recently, *Blokhin v. Russia* [GC], no. 47152/06, §§ 166-67, ECHR 2016). The Convention here refers essentially to national law and lays down the obligation to conform to its substantive and procedural rules, but it also requires that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Bouamar*, cited above, § 47, and *D.G. v. Ireland*, cited above, § 75). In addition, there must be a relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (see *D.G. v. Ireland*, cited above, § 75, and *Aerts v. Belgium*, 30 July 1998, § 46, *Reports of Judgments and Decisions* 1998-V, with further references).

72. It appears that the decision in the present case to admit the applicant to the school was taken in accordance with the Juvenile Antisocial Behaviour Act. The applicant argued in that connection that the concept of "antisocial behaviour" was not sufficiently clear to meet the Convention requirement of "quality" of the law, thus preventing her from being able to foresee the precise grounds on which she might be placed in a secure facility against her will. The Court's task is therefore to determine whether the domestic legal provisions in question were sufficiently accessible and precise in order to avoid all risk of arbitrariness in relation to deprivation of liberty (see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 97, ECHR 2006-XI, and *A. and Others v. Bulgaria*, cited above, § 67).

73. The Court is able to observe from the evidence before it that the domestic authorities justified the need to place the applicant in the school by referring to the risk of her being driven into prostitution, as she had been incited to perform "sexual services", and also to her lack of cooperation, her aggressive behaviour and her repeated attempts to run away (see paragraphs 10-13 above). It is undeniable that the Juvenile Antisocial Behaviour Act appears somewhat obsolete (see paragraph 76 below) and does not include an exhaustive list of the acts deemed to be "antisocial", which is why it does not explicitly refer to the acts which the applicant was said to have committed. The Act in question simply provides a general definition of the concept of "antisocial behaviour" ... However, the Court refers to its finding

in *A. and Others v. Bulgaria* (cited above) that, according to established judicial practice, prostitution and absconding are regarded as antisocial acts that may give rise to educational measures, including placement in a specialist institution (ibid., § 68 ...). It therefore considers that the applicant could reasonably have foreseen the consequences of her actions, and that in the circumstances of the case, a “procedure prescribed by law” was observed.

74. “Lawfulness” also implies that the deprivation of liberty is in keeping with the purpose of the restrictions permitted by Article 5 § 1 (d). It is the Court’s task to ascertain whether the applicant’s placement was such as to provide for her “educational supervision” (see *Bouamar*, cited above, § 50, and *Blokhin*, cited above, §§ 166-67). Once the State had chosen to introduce a system of educational supervision involving deprivation of liberty, it was under an obligation to put in place appropriate institutional facilities which met the demands of security and the relevant educational objectives, in order to be able to satisfy the requirements of Article 5 § 1 (d) (see *Bouamar*, cited above, § 50; *D.G. v. Ireland*, cited above, § 79; and *Blokhin*, cited above, § 167). It is also accepted that, in the context of the detention of minors, the words “educational supervision” must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned (see *Koniarska v. the United Kingdom* (dec.), no. 33670/96, 12 October 2000; *D.G. v. Ireland*, cited above, § 80; *A. and Others v. Bulgaria*, cited above, § 69; and *P. and S. v. Poland*, no. 57375/08, § 147, 30 October 2012). The Court has recently had the opportunity to point out that schooling in line with the normal school curriculum should be standard practice for all minors deprived of their liberty and placed under the State’s responsibility, even when they are placed in a temporary detention centre for a limited period of time, in order to avoid gaps in their education (see *Blokhin*, cited above, § 170). The Court finds it necessary to add in the present case that, as with the cases of detention provided for in Article 5 § 1 (b) and (e), the requirement of “lawfulness” in the context of detention “for the purpose of educational supervision” also implies the duty to ensure that the measure taken was proportionate to those aims (see, *mutatis mutandis*, *Vasileva v. Denmark*, no. 52792/99, §§ 37-42, 25 September 2003, and *Enhorn v. Sweden*, no. 56529/00, §§ 41 et seq., ECHR 2005-I). Where the detention concerns a minor, as in the present case, the Court considers, in the light of the relevant international standards, that an essential criterion for the assessment of proportionality is whether the detention was ordered as a last resort, in the child’s best interests, and was aimed at preventing serious risks for the child’s development. When this criterion is no longer fulfilled, the basis for the deprivation of liberty ceases to exist.

75. In the present case, the applicant alleged that the authorities' decision to place her in the school had not been taken for educational purposes but as a punishment, that the system for teaching and support at the Podem school did not comply with the requirements of Article 5 § 1 (d) of the Convention and that the choice of the measure had been arbitrary.

76. The Court observes, moreover, that the material before it includes criticisms of various aspects of the Bulgarian system for accommodating children in difficulty within the network of social institutions. It notes firstly that the Juvenile Antisocial Behaviour Act is undeniably obsolete and that, for historical reasons, it is based more on a philosophy of "punishing" than "protecting" children, a fact that has attracted criticism from international and national organisations (see paragraphs 39 ... above). Furthermore, when examining the first application by the local committee for the applicant's placement, the court found that the Podem school was an "unfavourable environment" (see paragraph 9 above). Subsequently, the State Agency for Child Protection and the Ombudsman both indicated their concerns as to the appropriateness of judicial proceedings concerning minors, the implementation of educational and support programmes, and the physical living conditions in the secure institutions for juveniles (see paragraphs 31-38 ... above). On this point, the Court is compelled to note that a national reform, encompassing wide-ranging legislative and administrative measures and encouraged by the United Nations Committee on the Rights of the Child, is currently being planned (see paragraphs 39 ... above). It also takes the view that its task is not to conduct an abstract examination, from the standpoint of the Convention, of the Bulgarian system of educational measures for minors, but to review the manner in which the existing system was applied in this specific case (see *Deweer v. Belgium*, 27 February 1980, § 40, Series A no. 35; *Schiesser v. Switzerland*, 4 December 1979, § 32, Series A no. 34; and *A. and Others v. Bulgaria*, cited above, § 70).

77. As to the aim of the measure and the operation of the educational and support system, the Court considers that the State should be afforded a certain margin of appreciation in organising the system in such a way as to make it effective. In the present case it observes, despite the criticisms levelled in general (see paragraph 76 above), that the applicant was able to follow a school curriculum, that individual efforts were made to alleviate her learning difficulties, that she achieved a mark allowing her to move up to the next class, and that she was eventually awarded a professional qualification offering her prospects of reintegrating into the community at a later stage (see paragraphs 24 and 26-27 above). Those factors are sufficient for the Court to conclude that the State cannot be accused of having failed to comply with its obligation under Article 5 § 1 (d) to ensure that the placement pursued an educational objective (contrast *Bouamar*, cited above, § 52; *D.G. v. Ireland*, cited above, §§ 83-85; and *Ichin and Others v. Ukraine*, nos. 28189/04 and 28192/04, §§ 39-40, 21 December 2010).

The Court reiterates that it does not consider itself to have jurisdiction to examine the possible failings of the national system any further, seeing that it has been able to establish from the evidence before it that the measure to which the applicant was subjected pursued an educational purpose on a sufficient scale to fall within Article 5 § 1 (d) of the Convention.

78. Concerning the allegedly arbitrary nature of the measure, its proportionality and whether it was taken as a last resort, the Court notes that the impugned decision to place the applicant in the school was taken by the judicial authorities following public hearings at which the applicant, the two social workers directly responsible for her, the representative of the local committee, the representative of the municipal child protection department and the inspector from the child protection team had given evidence. The applicant's mother was also present and a lawyer was officially appointed at her request. The courts examined the evidence in detail and held that, bearing in mind the environment in which the applicant had been living at the relevant time, there was no real alternative to her placement in a correctional boarding school.

79. In that connection it should be noted that Bulgarian legislation provides for a wide range of educational measures in response to juvenile antisocial behaviour. The most stringent of these measures – placement in a correctional boarding school – can only be applied where the other, less severe measures have had no effect ... As far as the Court is able to establish, the applicable procedure does not require the authorities ordering such a measure to draw up an individual plan setting out the practical educational objectives to be achieved by the children concerned. Similarly, although the statutory maximum duration of such a placement is set at three years ..., there does not appear to be any requirement for the courts to determine the length of the placement at the time of their initial decision. In the present case, those matters, and the question whether the Podem school was an appropriate institution in view of the applicant's circumstances, were not discussed during the judicial proceedings. The Court notes, despite those failings in the system, that the authorities had first established that the applicant was not living in a suitable family environment for her own development, and this had already been the reason for her admission to another institution as a protective measure in August 2012, under the Child Protection Act. Furthermore, in the course of the judicial proceedings the applicant's situation, her lifestyle and the risks to which she was exposed were highlighted in particular in the statements by the two social workers at the crisis centre, who had the closest contact with her. Their evidence indicated in particular that she still had dealings with the individuals who had initially incited her to engage in prostitution, that she was the victim of a "lover boy"-type trafficking scheme but refused to admit it and protect herself, that she behaved aggressively towards the staff at the centre and that she did not go straight back to the centre in the evenings after school. The

two social workers confirmed that the applicant's family environment was not favourable to her as there were indications that her mother had herself been a victim of violence and needed protection (see paragraph 11 above). The Court observes, moreover, that the mother had the option of addressing the court at the hearing, but it does not appear from the case file that she ever requested to do so ... The Court also notes that the applicant had clearly received educational support in the past, including less stringent educational measures than placement in the school (see paragraphs 11 and 13 above). It does not find it arbitrary that the measures taken in her case were deemed insufficient by the authorities on account of the factors set out above.

80. Having regard to those factors, the Court cannot accept the applicant's argument that her placement in the school was an arbitrary measure and that the courts did not take her interests into account. Admittedly, the courts' reasoning may appear somewhat brief and did not mention all the relevant circumstances. A particular cause for concern in this regard is that the courts did not address the issues relating to the individual plan for the applicant or to the duration and regular review of her placement. Nevertheless, the courts' decisions clearly reflected the statements by the two social workers who had direct responsibility for the applicant in the crisis centre. Thus, it appears that following an examination of the applicant's family situation, her social environment, her behaviour and the impact of the educational measures already implemented by the social workers, the judicial authorities reviewed and upheld the welfare institutions' conclusion that the child required heightened educational supervision. The Court observes that the domestic authorities' decision was largely driven by the concern to provide the applicant with an environment where she would be sheltered from specific, clearly identified risks, and hence to protect her interests as an adolescent in the process of psychological and social development. The material in the case file does not allow the Court to call into question the authorities' conclusion on the matter.

81. In the light of all the foregoing considerations, the Court is unable to conclude that the applicant's placement had a punitive purpose, and it considers that the authorities' decision formed part of a sustained effort to place her in an environment offering educational supervision and the opportunity to continue her school studies. It reiterates in this connection that the State has positive obligations to protect minors and, where applicable, remove them from an unfavourable environment (see, *mutatis mutandis*, *X and Y v. the Netherlands*, 26 March 1985, §§ 21-27, Series A no. 91; *Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 62-64, *Reports* 1996-IV; *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI; *Z. and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-74, ECHR 2001-V; and *A. and Others v. Bulgaria*,

cited above, § 73; see also Articles 19 and 37 of the United Nations Convention on the Rights of the Child).

82. In conclusion, the Court considers that the applicant's placement fell within the scope of Article 5 § 1 (d) and was in conformity with the requirements of that provision, including that of being proportionate to the educational aims pursued. Accordingly, it does not consider it necessary to determine whether sub-paragraph (a) of Article 5 § 1 is also applicable.

83. There has therefore been no violation of Article 5 § 1 of the Convention.

B. Alleged violation of Article 5 § 4 of the Convention

84. The applicant complained that it was impossible under Bulgarian law to have the lawfulness of her placement in a correctional boarding school reviewed at regular intervals. She relied on Article 5 § 4 of the Convention, which provides:

“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.”

1. The parties' submissions

85. The Government submitted that since the responsibility for placing the applicant in a supervised institution rested with the courts, a review of the lawfulness of that measure, as envisaged by Article 5 § 4 of the Convention, had been an integral part of their decisions. Section 31(3) of the Juvenile Antisocial Behaviour Act provided for the possibility of a judicial review of a proposal by the local committee to discontinue a placement without waiting for the end of the school year ... Lastly, in accordance with the applicable legislation, the duration of a placement was limited and could not exceed three years.

86. The applicant did not dispute that the courts had reviewed the lawfulness of the initial decision to place her in the institution. However, she had not had the opportunity to ask them for a subsequent review, at regular intervals, of the lawfulness of her placement, such a possibility being open only to the local committee. Furthermore, domestic law likewise did not provide for automatic periodic judicial reviews of such a measure.

2. The Court's assessment

87. The case-law principles applicable in the present case are summarised in *Stanev v. Bulgaria* ([GC], no. 36760/06, §§ 168-70, 17 January 2012). The Court further reiterates that a judicial review “at regular intervals” may be required by the very nature of the deprivation of liberty under consideration; the reasons initially warranting detention may

cease to exist (see *Winterwerp v. the Netherlands*, 24 October 1979, § 55, Series A no. 33). This applies, for example, to persons charged with a criminal offence who are detained pending trial (see *Bezicheri v. Italy*, 25 October 1989, §§ 20-21, Series A no. 164, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 162, *Reports* 1998-VIII), persons who are detained on psychiatric grounds (see, for example, *Winterwerp*, cited above; *X v. the United Kingdom*, 5 November 1981, Series A no. 46; and *Stanev*, cited above), certain prisoners serving a life sentence where, following the expiry of the minimum term, their continued detention depends on elements of dangerousness and risk that may change with the course of time (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 87, ECHR 2002-IV), and recidivists whose preventive detention is ordered following the expiry of the principal sentence (see *Van Droogenbroeck v. Belgium*, 24 June 1982, §§ 47-49, Series A no. 50). The right to a judicial remedy in the case of a minor who has been deprived of his or her liberty was also acknowledged by the Court in the *Bouamar* judgment (cited above, §§ 60-64).

88. The Court notes that the parties agreed that in the present case a judicial review had been included in the placement order made by the Regional Court on 16 July 2013. However, the question arising is whether the applicant was entitled to request a subsequent review of her detention and, if so, whether she was afforded such an opportunity.

89. As has already been noted, the applicant's detention was ordered for the purpose of educational supervision in order to correct her behaviour, which was deemed contrary to social norms (see paragraph 82 above). It amounted to a deprivation of liberty, the need for which was dependent on how her behaviour evolved over time; this was a factor to be taken into consideration, as in the cases cited above (see paragraph 87). The Court further observes that the applicant was admitted to the Podem school on 15 September 2013 for an unspecified duration (see paragraph 17 above), which, in accordance with the applicable legislation, could extend to three years ... Accordingly, in view of the possibility of a change in the applicant's behaviour during a period of that length, the Court considers that she should have been entitled to a periodic judicial review, carried out automatically at reasonable intervals and at her request, of the lawfulness of her continued deprivation of liberty (see *X v. Finland*, no. 34806/04, § 170, ECHR 2012 (extracts) and further references, where the Court held that a system of periodic review in which the initiative lay solely with the authorities was not sufficient on its own).

90. The Court reiterates in this connection that Article 5 § 4 guarantees a judicial remedy that must be accessible to the person concerned (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 52, Series A no. 93, and *Stanev*, cited above, § 170). However, it must be observed that the applicable legislation does not allow minors who have been placed in a correctional boarding school to apply to the courts for a review of their

detention. The Court notes the Government's argument that domestic law provides for the possibility of having the placement reviewed by the courts, further to a proposal by the local committee (see paragraph 85 above). However, assuming that the applicant had wished to go through the local committee, the Court observes that the committee is an administrative body with discretion to assess the minor's situation before deciding whether or not to apply to the courts for a review of the measure (...; contrast *M.H. v. the United Kingdom*, no. 11577/06, § 94, 22 October 2013, where the relevant administrative body was under a duty to refer an application for release to the judicial authority, and failure to do so would have entailed an infringement of the rights secured by Article 5 § 4).

91. The Court therefore concludes that the judicial remedy referred to by the Government was not accessible to the applicant.

92. The Court also observes that domestic law does not provide for automatic periodic judicial review of the detention in issue.

93. It follows that there has been a violation of Article 5 § 4 of the Convention in the present case.

C. Alleged violation of Article 8 of the Convention

94. Next, the applicant complained of the lack of confidentiality of correspondence at the Podem school. She submitted that mail was automatically monitored, including letters sent to non-governmental organisations and the relevant authorities. She also complained that she had not been allowed to have confidential telephone calls with people outside the school. She relied on Article 8 of the Convention, the relevant parts of which provide:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. The parties' submissions

95. In the Government's submission, the applicant had not been personally and directly affected by the system in place for monitoring correspondence. She had not been subjected to any “interference” within the meaning of Article 8 of the Convention, since she had not referred to any specific fact showing that she had engaged in correspondence from within the Podem school, that the correspondence had been monitored or that members of staff had prevented her from contacting any people outside the school or any non-governmental organisations.

96. As regards the system itself, the Government referred to Article 25, point 10, of the Podem school's internal regulations and argued that the monitoring of correspondence was linked to the aims inherent in the applicant's placement, namely her education and rehabilitation, and that it was also intended to maintain order and safety in the institution. In that context, the monitoring of correspondence was not incompatible with the rights of the children placed in the school, and given that the letters were invariably handed over to their addressees after being monitored, a balance was preserved between the interests at stake.

97. With regard to the applicant's telephone calls, the Government asserted that they had taken place under the supervision of the main teacher or a member of the support staff, in accordance with the applicable regulations, and that the conversations had never been recorded or intercepted. Furthermore, the applicant had not been deprived of "telephone contact with her mother". Accordingly, there had been no interference with her right under Article 8 of the Convention. In any event, the system of monitoring was intended to avert the risk of the children at the school committing further antisocial acts, such as those that had formed the basis for their placement, and it could not be viewed as contrary to Article 8 § 2 of the Convention.

98. The applicant submitted a detailed account of the applicable regulations governing the monitoring of correspondence and telephone calls and argued that she was not required to provide proof of any particular instance of interference, since in her view the interference derived directly from the system complained of. She added that since she could be certain that her letters and calls to non-governmental organisations were automatically monitored, she had been directly affected by the process.

99. The applicant also contended that the system in place did not meet any pressing need and that the applicable domestic legislation did not provide for sufficient safeguards against arbitrary interference by the authorities. She therefore concluded that the interference to which she had been subjected had not been necessary in a democratic society.

2. The Court's assessment

(a) System for monitoring correspondence

100. As regards the allegations about correspondence, the Court notes that the applicant has not produced any evidence to show that letters she sent or received while at the Podem school were opened or intercepted. It observes, however, that it is clear from Article 25, point 10, of the school's internal regulations that all pupils' correspondence is monitored in order to ensure that no prohibited substances or items are enclosed and also to check their contents ... The monitoring is therefore not the result of a decision taken by the authorities in respect of the applicant or any child in particular,

but stems from direct application of the relevant domestic law. That being so, the Court concludes that there has been interference with the applicant's right to respect for her correspondence (see *Campbell v. the United Kingdom*, 25 March 1992, § 33, Series A no. 233, and *Bochev v. Bulgaria*, no. 73481/01, § 94, 13 November 2008).

101. Such interference will contravene Article 8 § 2 of the Convention unless it is "in accordance with the law", pursues one or more legitimate aims and is "necessary in a democratic society" in order to achieve them.

102. The Court has already noted that the impugned monitoring of correspondence is provided for by the applicable regulations (see paragraphs ... and 100 above). It also observes that the applicant has not disputed that the relevant provision was accessible and foreseeable as to its application. Moreover, it can accept that the correspondence of juveniles in a secure educational facility may be monitored in order to prevent the arrival of, among other things, substances and items that may cause damage to the health and rights of other juveniles, or that risk undermining the established order within the institution. This is clear from the wording of Article 25, point 10, of the Podem school's internal regulations (see paragraphs ... and 100 above). The interference complained of can therefore be said to have pursued the aims of "prevention of disorder", "protection of health" and "protection of the rights of others", within the meaning of Article 8 § 2 of the Convention (see also, *mutatis mutandis*, *Campbell*, cited above, § 41, and *Petrov v. Bulgaria*, no. 15197/02, § 42, 22 May 2008).

103. It remains to be determined whether the systematic and automatic monitoring of the correspondence of the juveniles placed in the Podem school was "necessary in a democratic society". To determine whether this was the case, regard must be had to the normal and reasonable requirements of detention. The Court reiterates that some measure of control over the correspondence of persons who have been deprived of their liberty is called for and is not of itself incompatible with the Convention (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 98, Series A no. 61, and *Campbell*, cited above, § 45).

104. The Court notes that the present case raises the issue of whether the authorities' interference with the exercise by juveniles placed in a secure institution of their right to respect for their correspondence was proportionate, both in relation to the aims referred to (see paragraph 102 above) and in view of the specific needs of educational supervision. It considers in this regard that the margin of appreciation which the authorities may be afforded in such circumstances is narrower than in the area of monitoring prisoners who have committed a criminal offence. This stems from the very nature of the admission of juveniles to institutions for the purpose of educating them and preparing them for life in the community. Where juveniles are in the care of the authorities, as in the present case, all steps must be taken to ensure that they have sufficient contact with the

outside world, including by means of written correspondence, as this is an integral part of their right to be treated with dignity and is essential in preparing them for reintegration into society. The Court refers in this connection to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty ...

105. In the present case the Court notes, firstly, that, unlike Article 8 of the Convention with its requirements of “necessity” and “proportionality”, Article 25, point 10, of the Podem school’s internal regulations provides for automatic and indiscriminate monitoring of all correspondence of the juveniles placed in the institution ... The regulations make no distinction between the categories of people with whom the juveniles may correspond. However, the Court has frequently held that correspondence between detainees and their lawyers should in principle enjoy privileged status (see, among many other authorities, *Campbell*, cited above, §§ 47-48; *Erdem v. Germany*, no. 38321/97, § 61, ECHR 2001-VII (extracts); and *Petrov*, cited above, § 43). In the Court’s view, similar considerations may apply in the present case as regards the applicant’s potential correspondence with her lawyer or with non-governmental organisations protecting children’s rights. It observes that the applicable regulations do not safeguard the confidentiality of correspondence of this kind and instead subject it to the general monitoring measures.

106. In addition, neither these nor any other provisions set out the particular grounds and conditions that may justify monitoring of correspondence in any given case and do not indicate the duration of the measure, which is applied automatically. Lastly, the authorities are not required to give reasons for the monitoring (see, *mutatis mutandis*, *Calogero Diana v. Italy*, 15 November 1996, § 32, *Reports* 1996-V, and *Petrov*, cited above, § 44). The Court therefore concludes that Article 25, point 10, of the Podem school’s internal regulations grants the school authorities full discretion to monitor juveniles’ correspondence regardless of the category of addressee, the duration of this measure and the reasons that may justify it, and that such a system cannot be regarded as compatible with the purposes of Article 8.

(b) System for monitoring telephone calls

107. The Court notes at the outset that, in so far as domestic law afforded the applicant the opportunity to have conversations on telephones supervised by the school management, the restrictions and monitoring of such communications, contrary to what the Government maintained, may have amounted to interference with the applicant’s exercise of her right to respect for her family life and correspondence within the meaning of Article 8 § 1 of the Convention (see, *mutatis mutandis*, *Baybaşın v. the Netherlands* (dec.), no. 13600/02, 6 October 2005, and *Nusret Kaya and Others v. Turkey*, nos. 43750/06 and 4 others, § 36, ECHR 2014 (extracts)).

108. As regards the legal basis for the interference, the Court notes that the relevant domestic provision was Article 25, point 10, of the Podem school's internal regulations ... It also accepts that the interference pursued the legitimate aim of "prevention of disorder", as submitted by the Government.

109. The next question is whether the interference in issue was "necessary in a democratic society". In determining this question, regard may be had to the State's margin of appreciation (see *Campbell*, cited above, § 44). While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see *Szuluk v. the United Kingdom*, no. 36936/05, § 45, ECHR 2009). The Court would also emphasise how important it is that the authorities ensure that any measures restricting private and family life are as mild as possible where they are implemented in the context of deprivation of liberty for educational purposes alone. With this in mind, the Court is obliged to accord a narrow margin of appreciation to the State, and the considerations regarding the need to ensure conditions that are conducive to preserving contact between juveniles and the outside world are equally valid in relation to telephone conversations (see paragraph 104 above).

110. Turning to the present case, the Court observes that the Government have simply asserted that the legal framework was compatible with the requirements of Article 8 § 2 of the Convention, without actually putting forward any practical arguments to substantiate the need for it (see paragraph 97 above), and that they have not denied that the telephone communications in question took place under the supervision of staff members, thus rendering them devoid of any confidentiality. The Court must therefore examine the conditions to which the applicant's telephone conversations were subjected, under the rules in force at the relevant time, in order to assess whether those conditions were compatible with the requirements of the second paragraph of Article 8 of the Convention.

111. In this connection, the Court considers that, in view of the psychological and social development of children placed in care and the need for them to have as close family ties as possible, it is essential that the authorities should assist them in maintaining genuine contact with their close family (see, *mutatis mutandis*, *Van der Ven v. the Netherlands*, no. 50901/99, § 68, ECHR 2003-II, and *Nusret Kaya and Others*, cited above, § 59).

112. It is true that the applicant could receive visits and go home during the school holidays (see paragraph 28 above). She therefore had opportunities to maintain contact with her relatives. This fact does not detract from the finding that the rules governing correspondence were inadequate in that they rendered it devoid of all confidentiality (see

paragraph 106 above). The possibilities for the applicant to communicate with the outside world during her lengthy periods in the Podem school were therefore restricted. The Court also observes that the applicable internal regulations allowed the juveniles placed in the school to maintain links with outside by means of telephone conversations. However, for security reasons, such conversations required permission, particularly in the case of outgoing calls (which were the exception), and were subject to supervision by the staff, with the result that all telephone conversations were heard ...

113. The rules were applicable generally and indiscriminately to all minors, irrespective of any individual assessment of the security requirements that might be warranted by their particular character. The Court is mindful of the fact that these were young people who had not been involved in criminal proceedings. Although the applicant was accused of engaging in behaviour described as “antisocial” and requiring a certain degree of intervention by the State, the risks referred to by the Government in relation to her telephone conversations should have been scrupulously analysed and justified by the appropriate authorities. This does not appear to have happened in practice. The Court also infers from the wording of the relevant provisions that meetings with representatives of non-governmental organisations, including humanitarian ones, could likewise not take place unless supervised by members of the institution staff, in the absence of any individual assessment highlighting the potential risks.

114. Having regard to the evidence and information in its possession, the Court considers that the supervision arrangements applicable to the applicant whenever she wished to communicate by telephone with the outside world – which made no distinction between, for example, members of her family, representatives from organisations for the protection of children’s rights or other categories of people, and did not entail any personalised analysis of the risks – were not based on relevant and sufficient grounds in view of the resulting restriction on such contact.

(c) Conclusion

115. In conclusion, the Court considers that the measures to which the applicant was subjected in the Podem school, namely the system of automatic monitoring of correspondence, with no distinction as to the type of correspondence, and the supervision of telephone conversations, without any confidentiality, cannot be regarded as necessary in a democratic society.

116. There has therefore been a violation of Article 8 of the Convention.

...

FOR THESE REASONS, THE COURT

...

2. *Holds*, by six votes to one, that there has been no violation of Article 5 § 1 of the Convention;
3. *Holds*, unanimously, that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

...

Done in French, and notified in writing on 19 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge O’Leary is annexed to this judgment.

A.N.
M.B.

DISSENTING OPINION OF JUDGE O’LEARY

1. In the present case, while I subscribe fully to the majority finding that there has been a violation of Articles 5 § 4 and 8 of the Convention, I respectfully disagree with their decision regarding the lawfulness of the applicant’s detention pursuant to Article 5 § 1 (d).

A. The principles established in the case-law on Article 5 § 1 (d)

2. It will be recalled, briefly, that the list of exceptions to the right to liberty set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty. The Court has never formulated a global definition as to what types of conduct on the part of national authorities might constitute “arbitrariness”. It has, however, developed key principles on a case-by-case basis. The order to detain and the execution of the detention must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1. There must, in addition, be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention.¹

3. As regards the detention of minors pursuant to Article 5 § 1 (d), according to the case-law, the words “educational supervision” must not be equated rigidly with notions of classroom teaching. In the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned.² Furthermore, detention for educational supervision pursuant to this provision of the Convention must take place in an appropriate facility with the resources to meet the necessary educational objectives and security requirements.³ In *Blokhin*, the Grand Chamber recently stressed that any placement which is justified with reference to Article 5 § 1 (d) must be “for the purpose” of educational supervision and be characterised by the quality of the schooling and care provided as distinct from simply providing a disciplinary regime.⁴

4. It is true that the Court has already examined the Bulgarian system of detention in closed educational institutions, which the Court in *Blokhin*

¹ See, for example, *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 68-69, ECHR 2008, with further references.

² See, variously, *Blokhin v. Russia* [GC], no. 47152/06, § 166, ECHR 2016; *P. and S. v. Poland*, no. 57375/08, § 147, 30 October 2012; *D.G. v. Ireland*, no. 39474/98, § 80, ECHR 2002-III; and *Koniarska v. the United Kingdom* (dec.), no. 33670/96, 12 October 2000.

³ See *Blokhin*, cited above, § 167.

⁴ *Ibid.*, § 170.

distinguished from the temporary detention centres at issue in that case, finding no violation of Article 5 § 1 (d).⁵ I will elaborate later why I think *A. and Others v. Bulgaria* should be distinguished from the present case and why the Court should be much stricter in its assessment of “arbitrariness” when it comes to the detention of minors, pursuant to Article 5 § 1 (d), examining not just form but also where and in what conditions educational supervision is provided in practice.

B. Application of those principles in the instant case

5. The lawfulness of the applicant’s detention under national law is confirmed by the majority judgment. It was ordered by a domestic court on a statutory basis. As regards its lawfulness under the Convention, it appears that an educational programme of sorts was provided to detainees. In addition, the impugned detention order was made against the background of undeniable efforts by various domestic authorities to deal with the applicant. The majority judgment goes to considerable lengths to underline the procedural propriety of the decisions taken by the domestic authorities and the last-resort nature of the detention measure imposed.⁶

6. Why then propose a violation of Article 5 § 1? As is clear from the Court’s case-law, if the Bulgarian State chose a system of educational supervision implemented through court orders to deal with juvenile delinquency, it was obliged to put in place appropriate institutional facilities which met the security and educational demands of the system so established in order to satisfy the requirements of Article 5 § 1 (d).⁷ In other words, the primary if not exclusive purpose of the system should be educational and the supervision provided, as well as the context in which it is provided, must be fit for purpose. As indicated previously, in *Blokhin* the Court referred to the need, in order for Article 5 § 1 (d) to apply, for “a regime of educational supervision in a setting ... designed – with sufficient resources – for the purpose”.⁸

7. A careful reading of the case file in the instant case makes it difficult to conclude that these conditions were fulfilled as regards the detention of the applicant child.

⁵ *A. and Others v. Bulgaria*, no. 51776/08, §§ 66-74, 29 November 2011.

⁶ See the majority judgment, §§ 78-80.

⁷ *A. and Others v. Bulgaria*, cited above § 69, and *D.G. v. Ireland*, cited above, § 79.

⁸ See *Blokhin*, cited above, § 167, and previously, *Bouamar v. Belgium*, 28 February 1988, §§ 50 and 52, Series A no. 129, or *James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09 and 57877/09, §§ 193-94, 18 September 2012.

C. The underlying punitive or criminal character of the applicant's detention

8. Firstly, the latter complains, like the applicants in *A. and Others v. Bulgaria*, that, despite not having been convicted of any crime, she was detained in the Podem centre for a purpose which was not simply educational but also for purposes which she variously describes as punitive, correctional or deterrent.

9. The majority judgment does not deny the criminal character of the Bulgarian regime and it is very hard to dispel the impression that the applicant, a victim, from the age of twelve, of grooming, was being punished for the crimes of others. There is no indication in the file that those responsible for or involved in her grooming and subsequent prostitution were investigated, charged or brought to justice. Instead, the applicant repeatedly found herself before the criminal branch of the District Court, first the subject of barring orders (admittedly for her own protection), but subsequently of a detention order, confining her, for an unspecified period of time, up to a maximum of three years, to the Podem centre.

10. The wording of the majority judgment concedes the correctional, punitive and deterrent purpose of the detention when it refers to the fact that her detention was ordered “to correct her behaviour, which was deemed contrary to social norms”. It also characterises the Bulgarian care system as “obsolete” and as being punitive in origin and philosophy.⁹ The educational and protective purpose of the detention, without which the deprivation of the applicant's liberty pursuant to Article 5 § 1 (d) cannot be justified, is obscured if not lost. While the situation of the applicant in the *Blokhin* case can be factually distinguished – he was placed in a temporary detention centre for juvenile offenders – the Court found his detention unlawful both because of the absence of an adequate schooling programme and, more importantly, because his detention was for “‘behaviour correction’ and the need to prevent him from committing further delinquent acts”, neither of which the Grand Chamber considered a valid ground covered by Article 5 § 1 (d).¹⁰ The applicant demonstrates that both the procedure and the philosophy behind the placement of children in Bulgarian closed institutions is essentially criminal or punitive in character, referring to the reasoning in several District Court decisions, including that of the Pleven District Court which ordered her detention.

⁹ See paragraphs 73, 76 and 89 of the majority judgment; the wording of the detention order of the District Court of 10 June 2013, cited in paragraph 13, and the report of the Ombudsman on the corrective nature of this type of detention, cited in paragraph 52 [of the French version of the judgment].

¹⁰ See *Blokhin*, cited above, §§ 168 and 171.

D. The need for educational supervision which complies with the requirements of Article 5 § 1 (d) in practice

11. Secondly, even if the purpose of the detention could be regarded *formally* as being in conformity with Article 5 § 1 (d) – the punitive origins and philosophy of the regime being simply a historical hangover – the Court’s jurisprudence also requires an examination of the proportionality of the detention measure. The means chosen must constitute a last resort but must also be appropriate for the achievement of the objectives pursued. The conditions established by the Court’s case-law in this regard are set out in detail in paragraph 3 above.¹¹ On the basis of the evidence before the Court, it does not appear that the Podem centre (or the system of which it forms a part) fulfils these conditions.

12. The inadequacy of the Bulgarian network of closed educational institutions, both from the perspective of educational provision and the material conditions of life for detainees, is well-documented. Since 2009, the State Agency for Child Protection and, subsequently, the national Ombudsman have repeatedly highlighted the problems which beset the system, including, *inter alia*: the educational programmes provided are not methodologically suited to vulnerable children; individual plans suited to each child are not followed up; no contact with families is encouraged or, in some cases, allowed; violence is prevalent and suicide rates are high; staff numbers are insufficient to cater for the children detained, and staff are not trained to correctly address their psychological needs. In 2013-2014, 52% of minors detained in Bulgarian closed educational institutions achieved no educational qualifications.¹² For the Ombudsman, the placement of children in these centres and the conditions which they encounter there violate certain human and children’s rights.

13. While these reports bear witness to the operation of and conditions in the centres in general, I respectfully disagree with the majority when they suggest that the applicant is requesting the Court to engage in an *abstracto* review of the Bulgarian system.¹³ On the contrary, her application clearly details why, in her particular case, the system was not fit for purpose; a claim supported by the numerous reports cited in the majority judgment and summarised above, which date back to 2009.

14. When the detention of the applicant in the Podem centre was first requested by the competent local authority in April 2013, the District Court denied the request due to what it regarded as the unfavourable environment in that centre and the risk which detention would pose for the applicant’s

¹¹ See also *D.G. v. Ireland*, § 79; *A. and Others v. Bulgaria*, § 69; and paragraph 74 of the majority judgment.

¹² See the details in the reports of the State Agency for Child Protection reproduced in paragraphs 32-39 of the majority judgment.

¹³ See the majority judgment, § 76.

psychological and social development.¹⁴ Two months later, the detention order was granted, despite the fact that the psychological and social work done in the less restrictive care facility had been producing positive results and that the applicant's behaviour seemed to deteriorate around the time of the detention hearing.¹⁵ The applicant attempted suicide after her detention was ordered; an attempt which she succeeded in repeating while in detention. Remarkably, a minor who had attempted suicide on 13 September 2013 and who was medically certified as being in a fragile state was detained just two days later for an undisclosed period, without the possibility of review (see the complaint in relation to Article 5 § 4, upheld by the Chamber unanimously) and without, it would seem, any further assessment of her psychological state or needs.¹⁶ Before being detained, the applicant appealed the detention order, complaining that the length of her detention had not been specified and that her mother had not been heard. The majority judgment regrets the absence of any reference by the District Court to the length and possibility of review of the detention but states that the applicant's mother could have requested to be heard by that court, despite the fact that the Regional Court had held that hearing the mother was not required by national law.¹⁷ Regarding the detention itself, the applicant emphasises that the educational council of the Podem centre did not evaluate any student positively in 2012 and 2013, either from an educational or a behavioural perspective, which meant no student could be considered for release. The applicant claims that she continued to be threatened by her traffickers while in detention; an allegation not contested by the respondent Government. Violent outbreaks in Bulgaria's closed educational institutions led to a court-ordered review of all of them, including the Podem centre. While in detention, the applicant could not request that her deprivation of liberty be periodically reviewed. Furthermore, her communications with her family were subject to automatic and undifferentiated control by the centre's authorities, although such contact is recognised as essential for the psychological and social development of minors and what should be the primary purpose of their educational supervision for it to be considered as coming within the scope of Article 5 § 1 (d), namely education, rehabilitation and reintegration into society.

15. Despite the general details available regarding the operation of the educational supervision centres at issue in this case and the specific details of her own detention provided by the applicant, the majority judgment indicates that the detention order imposed by the District Court was with a view to protecting her interests as an adolescent in full social and

¹⁴ Ibid., §§ 9 and 76.

¹⁵ Ibid., § 11.

¹⁶ Ibid., §§ 17-19.

¹⁷ See, in this order, paragraphs 80, 79 and 15 of the majority judgment.

psychological development and that the Court cannot interfere with the conclusions of the national authorities. As stated previously, while I would not contest that the applicant's detention may appear *formally* regular and that other measures had been tried, it is impossible, on the basis of the information in the case file, to conclude that the means chosen were fit for purpose and capable of being judged appropriate for the achievement of the aims pursued. The Court's existing case-law on Article 5 § 1 (d) suggests that when an institution formally ticks this provision's boxes, the Court will not engage in a qualitative assessment of the supervision provided.¹⁸ Given the age and vulnerability of those whose deprivation of liberty is sought to be justified under this sub-paragraph, and given the Court's own tests for assessing arbitrariness and proportionality (see paragraphs 2, 3 and 11 above), this is to be regretted.

16. The system's unfitness for purpose – certainly in the specific case of the applicant – is clinched by the violations of Articles 5 § 4 and 8. One can of course view these complaints separately and with clinical judicial detachment; but the fact remains that a 14-year-old girl was detained, without the possibility of review, in conditions not conducive to her social and psychological development, while contact with her family was interfered with or denied. The Court has of course held that Article 5 §§ 1 and 4 are separate provisions, such that the observance of one does not necessarily entail observance of the other.¹⁹ Nevertheless, when examining whether the detention of a minor can be considered “arbitrary” for the purposes of Article 5 § 1 (d), the extent and nature of the separate, but related, violations of Article 5 § 4 and Article 8 can hardly be considered irrelevant.²⁰

E. Conclusions

17. There is no doubt that States, called on to fulfil their positive obligation to protect minors from neglectful or abusive home or local environments, face difficult, and sometimes costly, decisions. It is tempting perhaps to conclude that, while the Bulgarian system is not perfect, it is better than nothing. Further comfort could be drawn from the action plan formulated by the responsible Minister but not acted upon to date. However,

¹⁸ *Koniarska v. the United Kingdom* is a rare exception. Qualitative assessments seem to occur only where minors are detained in remand prisons or certain types of juvenile detention centres – see, for example, *Bouamar*, *D.G. v. Ireland* and *Blokhin* – in other words, in institutions which do not even formally comply with Article 5 § 1 (d).

¹⁹ See *Douiyeb v. Netherlands* [GC], no. 31464/96, § 57, 4 August 1999, and *Kolompar v. Belgium*, 24 September 1992, § 45, Series A no. 235-C.

²⁰ The relevance of the Article 8 violation is inadvertently conceded in §§ 104 and 111 of the majority judgment when it is recognised that the social and psychological development of the detained minors and their successful reintegration into society depended on provision being made for contact with their families, something which was not done.

to deprive someone of their liberty is to deprive them of a fundamental right considered by the Court to be of primary importance in a democracy.²¹ Unlike the applicants in *A. and Others v. Bulgaria*, who were detained between 2008 and 2010, when the problems besetting the Bulgarian centres for educational supervision were not yet known or only coming to light, the applicant was detained in September 2013, when those problems were well-documented and severe. The majority judgment refers to case-law and international instruments which require that the child's best interests be the primary consideration of decision-makers in circumstances such as these.²² The recent Grand Chamber judgment in *Blokhin* is even more prolific in this regard.²³ However, if the Court fails, when required, to condemn systems which ostensibly seek to protect children but which, in their organisation and functioning, fail to do so then these references are neither necessary nor useful.

²¹ See *Ichin v. Ukraine*, nos. 28189/04 and 28192/04, § 31, 21 December 2010.

²² See the majority judgment, §§ 53-58.

²³ See *Blokhin*, cited above, §§ 77-89.