



**An evaluation of progress
towards inclusive education of children with disabilities in Bulgaria:
one year after the decision of the European Committee of Social Rights in the
collective complaint MDAC v. Bulgaria**

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This report, written by the Mental Disability Advocacy Center and the Bulgarian Helsinki Committee, evaluates actions undertaken by the Bulgarian government to bring its laws, policies and practices in line with the decision of the European Committee of Social Rights of the Council of Europe in the collective complaint Mental Disability Advocacy Center v. Bulgaria. It provides an analysis of the recommendations made by MDAC and BHC in October 2008 which were based on the collective complaint decision and were presented at a public roundtable at that time.

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I. Abbreviations

BHC – Bulgarian Helsinki Committee

ECSR – European Committee of Social Rights

HCJMD - Homes for Children and Juveniles with Mental Disabilities

HMDC – Homes for Mentally Disabled Children

MDAC – Mental Disability Advocacy Center

MES – Ministry of Education and Science (this Ministry existed until July 2009 at which time its name was changed to the Ministry of Education, Youth and Science)

MEYS - Ministry of Education, Youth and Science

MLSP - Ministry of Labour and Social Policy

NGO – Non-governmental organisation

SACP – State Agency for Child Protection

UNESCO – United Nations Educational, Scientific and Cultural Organisation

II. Authors

MDAC

MDAC is an international NGO which advances the human rights of children and adults with actual or perceived intellectual or mental health disabilities. Focusing on Europe and Central Asia, it uses a combination of law and advocacy to promote equality and social integration. MDAC has participatory status at the Council of Europe, and has been working in Bulgaria extensively since 2005, laying particular emphasis on the rights of children and adults with disabilities living in segregated institutions. MDAC's vision is for a world that values emotional, mental and learning differences, and where people respect each other's autonomy and dignity.

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BHC

The Bulgarian Helsinki Committee is an independent NGO for the protection of human rights. Its objectives are to promote respect for the human rights of every individual, to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularise and make widely available human rights instruments.

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III. Executive Summary

This report assesses actions undertaken by the Bulgarian government one year after the decision of *MDAC v. Bulgaria* was made public. In that ‘collective complaint’ brought under the European Social Charter, the European Committee on Social Rights found a violation of Article 17(1) on the right to education for children with mental disabilities living in institutions, and a violation of Article E of the European Social Charter, which protects against discrimination. The European Committee on Social Rights found that the children were discriminated against because of their disability.

In October 2008, NGOs, the Mental Disability Advocacy Center and the Bulgarian Helsinki Committee, produced a summary of the *MDAC v. Bulgaria* decision, and a set of detailed recommendations for the government to bring its laws, policies and practices in line with the European Committee on Social Rights decision.

This report examines the extent to which the recommendations have been met, one year after they were made. The report is addressed to the Bulgarian government and puts on record the progress made and the further steps which need to be made. It is equally addressed to the Bulgarian public to assist them in holding their elected officials to account. Finally, it is addressed to the international community to ensure that international human rights litigation is enforced.

The recommendations are as follows. The third column is MDAC/BHC’s conclusions on whether the recommendations have been met.

	Recommendations	Fulfilled at October 2009?
1	<i>Amend Public Education Act (and relevant secondary legislation) to recognise inclusive education as an inherent component to the right to education. Amend Protection Against Discrimination Act to expressly recognise segregated education on grounds of health status as an egregious form of discrimination. Recognise that inclusive education will require additional resources.</i>	No
2	<i>a) Adopt a timetabled plan to eliminate segregated school practices altogether. b) Streamline all educational programmes into one school system under the responsibility of the Ministry of Education and Science; to this end, amalgamate budgets and the administration of special and mainstream education. c) Ensure that schools and curricula are adaptable and accessible to all children, including children with special education needs.</i>	Partially
3	<i>Train special teams in inclusive education among the teachers and non-pedagogical staff in each school. Increase the number of teachers specialised in inclusive education in all schools. Resources must be ensured for such training and for implementing inclusive education in schools.</i>	Partially
4	<i>Open a permanent dialogue and build partnerships with existing civil society initiatives and organisations working for child welfare reform so that they are</i>	No

	<i>able to play a role in the planning, execution, and monitoring of education for children with disabilities.</i>	
5	<i>Establish and implement a comprehensive data collection system which takes into consideration the number of children with disabilities (disaggregated by age, sex, type of disability) attending mainstream schools, special schools, or receiving schooling within institutions, completing primary and/or secondary schooling; statistics concerning types of institutions and educational programmes pursued by children residing therein, and the teacher to child ratio for educational programmes in institutions.</i>	Partially
6	<i>Ensure implementation of inclusive education by disseminating to all stakeholders information on legislative and policy changes, identifying responsibilities and deadlines for action, and providing any necessary training or consultations.</i>	No
7	<i>Develop a transition plan towards inclusive education which is incorporated into legislative and policy frameworks and addresses the specific situation of children living in "Homes for Mentally Disabled Children" (HMDC). Ensure that such a plan identifies duty bearers, includes performance indicators (see Recommendation No. 8, below), and is disseminated widely.</i>	Partially
8	<i>Adopt performance indicators by which provision of education, whether inclusive or special, can be measured and assessed by the government and civil society stakeholders. Specify these performance indicators in the transition plan mentioned in Recommendation No. 7, above.</i>	No
9	<i>Ensure that the Ministry of Education and Science is allocated sustainable financial resources to implement the right to education for children with disabilities, giving priority to their inclusion into mainstream schools.</i>	No
10	<i>Establish a formal monitoring system of children's institutions which closely examines the right to education of children with disabilities. Ensure that monitoring regularly evaluates how management secures the full range of human rights to which children are entitled, and incorporates concrete steps to follow up recommended actions. Monitoring must also involve equal participation of civil society organisations. Information relating to monitoring methodology, visits and reports should be made publicly available.</i>	No
11	<i>Introduce legislation to Parliament which would insert a specific prohibition of discrimination on the ground of disability in the Bulgarian Constitution and the Public Education Act.</i>	No

The findings of the evaluation point to continued segregation and discrimination of children with disabilities living in “Homes for mentally disabled children” (*hereinafter* “HMDC”), for example:

- HMDC children with medium or profound intellectual disabilities continue to be discriminated against in their right to education by being deprived of education in a mainstream school. Their only options remain attending special schools or schooling within the HMDC;
- HMDC children are not allowed to repeat a school year and their schooling comes to a mandatory end at Grade 8, compared with children in mainstream schools who are allowed to repeat a year if they need to. Thus, the law prescribes an inferior standard of education to this group of children and provides no adjustments tailored to their individual learning needs with respect to the duration of their education;
- Allocation of resources and funding to schools and resource centres, including provision of teaching and educational materials, favours the integration of children with sensory or physical disabilities in mainstream schools. Children with intellectual disabilities, however, are still subject to resource allocations which target their attendance in special schools, thereby denying them equal access to mainstream schools.

The report sets out an analysis of progress under each recommendation and elaborates on those recommendations which have yet to be achieved, in order to provide the government with information about necessary further action.

IV. Introduction

This report seeks to evaluate the Bulgarian government's progress in ensuring inclusive education in follow up to the European Committee of Social Rights decision *MDAC v. Bulgaria*, no 41/2007. In its decision, the Committee found Bulgaria in violation of the Revised European Social Charter for denying institutionalised children with disabilities of their right to education and for exercising disability-based discrimination in this respect.

The decision calls for concrete implementation of inclusive education laws and policies. Having sparked attention amongst Bulgarian civil society and the international community, many individuals and organisations are keen to know whether reforms are being carried out appropriately and speedily.

Many definitions of "inclusive education" exist and MDAC and BHC use UNESCO's definition taken in their *Guidelines for inclusion*, in which inclusive education is seen as:

*"a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children... Rather than being a marginal issue on how some learners can be integrated in mainstream education, **inclusive education is an approach that looks into how to transform education systems and other learning environments in order to respond to the diversity of learners.** It aims towards **enabling teachers and learners** both to feel comfortable with diversity and to see it as a challenge and **enrichment of the learning environment**, rather than a problem".¹*

The report thereby measures whether the inclusive education approach has been adopted by the Bulgarian education system to transform schools and classrooms to respond to the diverse learning needs of each child.

This report aims to assist in advancing the inclusive education agenda by keeping Bulgarian citizens and the international community aware of how the government is taking forward its commitment to guarantee this essential right for children with disabilities. The report also aims to encourage and support governmental action by acting as a mirror to identify the successes and shortcomings of steps already taken, and by making constructive recommendations to ensure that inclusive education is not only available and accessible in practice, but is of high quality and is equitably delivered.

¹ Emphasis added. UNESCO, *Guidelines for inclusion: ensuring access to education for all*, Paris, 2005, pp. 13 & 15, available for download from www.unesco.org

V. Background

a. *Decision of collective complaint MDAC v. Bulgaria*

In February 2007, international NGO, the Mental Disability Advocacy Centre (MDAC), in cooperation with Sofia-based human rights NGO, the Bulgarian Helsinki Committee (BHC), lodged a 'collective complaint' against Bulgaria to the European Committee of Social Rights (ECSR) of the Council of Europe. The complaint argued that children with moderate, severe or profound disabilities, living in "Homes for Mentally Disabled Children" (HMDC) in Bulgaria, receive no education on account of their disabilities, and that this is a result of discrimination against the children on account of their disabilities. On 10 June 2008, the ECSR issued its decision finding a violation of Article 17(2) (right to education)² alone and in conjunction with Article E (right to non-discrimination)³ of the Revised European Social Charter because children with moderate, severe and profound intellectual disabilities residing in HMDC do not have an effective right to education and this is due to disability-based discrimination.

The ECSR decision highlighted the inadequacy of Bulgarian standards for inclusive education. It noted that legislation and policies remain unimplemented and unmonitored.

Specifically, the ECSR noted that:

- mainstream schools are not accessible or adaptable to children who live in HMDC;
- teacher training is inadequate and educational curricula and teaching resources are not adapted to the special learning needs of children with intellectual disabilities;
- HMDC are not educational institutions and do not provide children with schooling, consequently children are prevented from entering secondary education;
- the Bulgarian government failed to implement a 2002 law which provided that children in HMDC could be integrated into schools;
- as a result of the failure to implement the law, only 6.2% of children in HMDC receive an education, whereas primary school attendance for Bulgarian children in general is approximately 94%;
- the disparity between school attendance for children with and without disabilities is so great that it constitutes discrimination against children with intellectual disabilities living in HMDC.

Furthermore, the ECSR expressly rejected the Bulgarian government's argument that the educational rights of children with disabilities are being implemented progressively due to financial constraints. The Committee considered that specific steps should have been taken by the government to implement legislation and policies on inclusive education and that these steps did not attract excessive additional cost.

² Article 17 (2) of the Revised Charter requires States "to take all appropriate and necessary measures designed to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at school".

³ For more information, see *MDAC v. Bulgaria* (no 41/2007), 10 June 2008, § 18.

b. MDAC & BHC Roundtable event: Giving meaning to the right to education for children with mental disabilities

Two weeks following the public dissemination of the decision, MDAC and BHC organised a high profile roundtable event which took place in Sofia on 29 October 2008. Gathering representatives from all key ministries, members of civil society and international experts (including ECSR President, Professor Polonca Končar), the discussion centred on approaches that the government should take to comply with the ECSR decision. MDAC and BHC published a summary of the roundtable which is available in Bulgarian and English from their websites.

Representatives of the Ministry of Labour and Social Policy (MLSP) announced the formation of an inter-Ministerial working group to address the issues in the ECSR decision. Representatives of the Ministry of Education and Science (MES) admitted that legislation had not been properly applied. The 2007 National Plan for Integration of Disabled Children had not been duly implemented and the MES had not benefited from increased resource allocation to carry out this plan. A 2009 strategy towards inclusive education for all children which would be supported by the necessary financial resources was briefly outlined. In a second panel, civil society organisations and education experts outlined the ways in which it is possible to provide equal educational opportunities by sharing good practices within Bulgaria, proposing programme approaches, and by identifying and attending to the institutional challenges in providing an inclusive education system, such as child assessment, training and capacity building, and how to ensure adequate resources. There was a clear consensus that the overall challenge of inclusion is to address diversity whilst enabling every child to have an equal opportunity to achieve their fullest potential.

During this event, and in post-roundtable meetings with government officials responsible for these matters (including the State Agency for Child Protection (SACP) and the Social Assistance Agency of the MLSP), MDAC and BHC submitted targeted recommendations in order to provide guidance to the government to take steps to comply with the Committee's decision, and to facilitate a discourse on inclusive education for all.⁴ The proposed recommendations were also supported by international and Bulgarian civil society actors, and the UN Special Rapporteur on the Right to Education sent a tailored message which was read out to the participants.

MDAC and BHC also pledged to report on the steps taken by the Bulgarian government to all interested actors, including the ECSR, Bulgarian civil society, the European Parliament and the UN Special Rapporteur on the Right to Education.

⁴ See MDAC and BHC's Analysis and Recommendations arising from the ECSR decision is accessible here:
http://www.mdac.info/images/page_image/MDAC_v_Bulgaria_summary_and_recommendations.pdf

VI. Evaluation of Government's progress

In order to evaluate the government's progress towards achieving inclusive education, MDAC and BHC's Recommendations are reproduced below and taken as indicators against which government action is analysed.

For each recommendation, an indication is given on whether the government has achieved it. This is followed by a description which explains the government's actions or inactions with respect to fulfilling each particular recommendation. Where recommendations consist of several proposed actions, they have been broken down to address compliance with each individual measure.

- 1. Amend Public Education Act (and relevant secondary legislation) to recognise inclusive education as an inherent component to the right to education. Amend Protection Against Discrimination Act to expressly recognise segregated education on grounds of health status as an egregious form of discrimination. Recognise that inclusive education will require additional resources.***

Has the recommendation been met?

No

Analysis

Regulation No 1/2009 for the Education of Children and Pupils with Special Educational Needs and/or Chronic Diseases was adopted on 23 January 2009 (*hereinafter* "Regulation No 1/2009"). It recognises that children with special educational needs must be integrated into mainstream schools as far as possible. However, although it purports to facilitate this integration, it fails to recognise inclusive education as an inherent component to the right to education. There is no specific mention of 'inclusive education' in Regulation No 1/2009, nor any description of the notions inherent in inclusive education as defined by UNESCO (see above). Given that there is no definition of inclusive education in any piece of Bulgarian legislation, there is a great scope for misunderstanding when it comes to implementation. In addition, legislation is silent upon the idea that family, community and civil society should be included as active participants in inclusive education.

Instead, Regulation No 1/2009 focuses largely on the assessment which determines whether a child will attend a special school (for children with disabilities) or a mainstream school. The Regulation is silent on *how* mainstream schools should be adapted to manage children with disabilities who may be placed in mainstream educational system. As UNESCO and the UN Special Rapporteur on the Right to Education have stated, inclusive education does not just mean integration of children with different levels of ability in one school; it is not a question of place. It means fully recognising and accommodating their different needs through a transformed culture of schools. The Regulation has attracted no additional resources, which itself indicates that there is an inadequate network of support for transforming the educational system so as to fulfil each child's right to education.

There has been no amendment of primary legislation. MDAC and BHC are aware that a draft of the Public Education Act has been lodged in the Parliament by the Council of Ministers, the executive branch, but there is not yet a public document available.⁵ MDAC and BHC respectfully ask the government to ensure that there is a meaningful public consultation process to ensure that the legislation meets the needs of children with disabilities and that all stakeholders have an opportunity to be involved. The UN Convention on the Rights of Persons with Disabilities states the following at Article 4(3):

"In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations."

Bulgaria has signed this Convention, indicating that it will ratify it soon, like many Member States of the European Union. Given that Article 24 of the Convention covers the right to inclusive education, the Bulgarian government should follow the letter of Article 4(3) and spirit of inclusion and participation of children with disabilities and their representative organisations at all stages of the policy cycle.

2. **a) Adopt a timetabled plan to eliminate segregated school practices altogether.**
- b) Streamline all educational programmes into one school system under the responsibility of the Ministry of Education and Science; to this end, amalgamate budgets and the administration of special and mainstream education.**
- c) Ensure that schools and curricula are adaptable and accessible to all children, including children with special education needs.**

Has the recommendation been met?

Partially

Analysis

a) Timetabled plan

Regulation No 1/2009 does not include the closure of segregated schools as an objective, nor does it set a timetable.

b) One responsible ministry

Regulation No 1/2009 does not provide for the amalgamation of special and mainstream education. Responsibility for the education of children living in HMDC remains spread across different Ministries and there is a serious lack of cooperation and coordination amongst them, to the detriment of all children.⁶ HMDC are run by the municipalities with

⁵ See <http://www.parliament.bg/?page=app&lng=bg&aid=4&action=show&lid=2520>; The Council of Ministers (*Ministerski savet*) is the main authority of the executive power in Bulgaria. It consists of the Prime minister of Bulgaria and all the specialised ministers.

⁶ BHC received a letter from the Regional Inspectorate on Education (no 1104-6/13.10.2009) which states that obtaining the participation of representatives of the Regional Health Centre (Ministry of

predetermined state funding allocated by the Ministry of Social Policy. The funding is determined per capita by the Council of Ministers on an annual basis. As stated by the UN Special Rapporteur on the Right to Education, when responsibility extends among different ministries, there is a risk of incoherent policy and legislation and flawed implementation in the context of inclusive education.⁷ The establishment of a single state authority, namely, the Ministry of Education, Youth and Sport, to take full charge of ensuring the right to education for all children is therefore essential.

c) Adaptability

i. *Adaptability of schools*

Information provided by the MEYS reports that during 2008, 980,769 BGN (approximately 500,000 EUR) was spent on the adaptation of the architectural environment of 40 mainstream schools, and in 2009, 781,783 BGN (approximately 400,000 EUR) was spent on adaptations, deriving from the budget of the MEYS.⁸ Apart from the structural adaptation of schools, Regulation No 1/2009 states that schools must apply to the Ministry of Education to request special teachers and supportive environment and await the Ministry's decision. MDAC and BHC believe that placing the onus on schools to ensure that they are adaptable to all children will be ineffective unless directives and guidelines are properly disseminated to them and incentives are provided.

ii. *Adaptability of curricula*

Article 5 of Regulation No 1/2009 indicates that the educational needs of children shall be based on pre-school educational plans, mainstream school plans and individual educational plans. This is a positive step towards the flexibility of curricula recommended by UNESCO as vital for inclusive education.⁹ Article 31 of Regulation No 1/2009 sets out the aims of the individual educational plans and places the obligation to prepare these plans on "educational teams" in the schools or in the kindergartens.¹⁰

Health) and the Regional Directorate of Social Assistance (Ministry of Labour and Social Policy) in the work of special teams for complex pedagogical evaluations at the Regional Inspectorate of Education in Sofia has proved to be problematic.

⁷ UN Special Rapporteur on the Right to Education, 'The right to education of persons with disabilities', A/HRC/4/29, 19 February 2007, §24.

⁸ These adaptations consisted of building ramp and elevators and making bathrooms accessible, hence catering to the needs of children with physical disabilities. The MEYS indicated that the criteria for identifying schools to be adapted were: the number of integrated children and students; suitability of buildings; and the perspective for the development of school.

⁹ See UNESCO's Open File on Inclusive Education, this document is an introduction to inclusive education for policy-makers and managers who have an important role to play in bringing about the change needed to make inclusive education a reality, <http://unesdoc.unesco.org/images/0013/001321/132164e.pdf>, p. 10.

¹⁰ Article 7 of Regulation no 1/2009 defines the educational team as, "teams of specialists that shall include educational specialists, resource teachers, psychologists, speech therapists, rehabilitation specialists, parents or guardians of children and pupils with special education needs. For the children and pupils with special education needs who reside in institutions, the services of a specialist appointed by the director of the institution will be a member of the team of specialists."

The individual educational plans must contain the development of social skills necessary for independent living (Article 31(4)). Article 32 provides principles under which the programme must be prepared. These include: protection of the rights of the child or the student; an individual approach in the process of planning activities with emphasis on the capabilities, skills and strengths of the child or student; comprehensive impact of planned activities; teamwork in implementation of the programme; implementation of the programme at all stages; sustaining and systematising the planned activities; ensuring consent and possibilities of choice of the child or the student and his/her family on the basis of information given in advance about planned activities. Article 33 requires that the content of the plan include: potential and needs of the child or the student based on comprehensive pedagogical assessment; main aims and objectives of education, upbringing and development related to the potential and needs of the child or student; special methods and means for achieving aims and objectives; the areas in which particular activities are planned for achieving planned aims and objectives; criteria for determination of progress achieved in education, upbringing and development; an evaluation mechanism by which to determine according to the kind and degree of the particular disability the level of acquired knowledge, skills and competences, cognitive development, language and speech development, special emotional, character and behavioral features; the results achieved in every area; proposals for changes in the individual programme as a result of education, upbringing and development of the child or student.

The legislation needs to be expanded to clarify how such individual educational plans will be adopted in practice, as there is a lack of concrete measures in Regulation 1/2009. For example, the Regulation is silent on how teachers will be trained to develop these individual educational plans. It is silent also on the content of new curricula to encourage both school-level adaptations, and successful modifications to curricula which meet the needs of individual students, and on how teachers will be trained to adapt curricula to the diversity of learning needs in one classroom. Although Article 32 of Recommendation 1/2009 sets out general principles, these do not provide practical guidance on how educational teams will coordinate and cooperate to successfully create individual education plans and on how to keep them relevant. Overall, the Regulation does not deal with exactly how inclusion will be achieved.

d) Accessibility

i. *Accessibility of Schools*

Although Regulation No 1/2009 provides that *“children and pupils with special educational needs may be educated in specialised kindergartens and schools if placement at mainstream kindergartens and schools is not available”*,¹¹ it fails to define how a determination is to be made about the availability of mainstream places, and fails to specify which body is to be responsible for such determinations. MDAC and BHC are of the view that there needs to be a list of options which must be exhausted before a child is referred to special education. Further, to ensure transparency and encourage participation of parents, duty bearers must be properly identified so that parents can obtain advice

¹¹ Regulation No 1/2009 for the Education of Children and Pupils with Special Educational needs and/or chronic diseases, Article 3(2).

from them and the bodies can be properly held to account. Regulations should outline the coordination and hierarchy between alternative options, should ensure that advice to parents is given in writing, and should set timeframes for the dispensation of advice. The mechanism must also clearly state the responsibilities of officials towards parents, set out the sanctions for officials who give inappropriate advice, and establish an independent body before which parents can lodge complaints about mainstream schools that have refused to enrol their child (a similar independent monitoring mechanism is envisioned by Article 33(2) of the UN Convention on the Rights of Persons with Disabilities).

Although Article 23 of Regulation No 1/2009 provides a means of appeal against a decision of the assessment team which determines a child's placement into a mainstream or a special school, such an appeal may only be made to the Ministry of Education and Science rather than to an independent body. The time limit of ten days from their notification of the issued recommendation to lodge an appeal is too brief: it imposes a needlessly short timeframe for parents to seek and obtain legal advice and explore options in the locality. The fact that appeals go to a branch of the government rather than an independent body, and the fact that appeals have to be lodged within ten days is demonstrative of a bureaucratic socialist approach where the government knows best. The lack of a meaningful appeal process seriously undermines the integral role which parents play in decision-making with regard to the education of their children. Furthermore, there are very minimal prospects of being granted state funded legal aid to seek judicial review of the Ministry's decision.¹²

There is also a lack of a real choice for parents to enrol a child with intellectual disabilities in a mainstream school, because they are limited to enrolling their child in a school which is prepared to provide inclusive education. In other words, a head teacher is free to refuse a place to such a child on the basis of their disability, simply because the head teacher does not want to make the necessary adaptations. There are no clear criteria about how schools and kindergartens become inclusive and there is no list publicly available of the schools and kindergartens that are already adapted for this purpose. Again, this allows head teachers to actively discriminate against children with disabilities, and allows them to carry on conveniently without playing their part in educating children with disabilities in their localities, thereby undermining inclusion altogether.

At the MDAC and BHC roundtable meeting on 29 October 2008, a representative of the Ministry of Education and Science stated that special schools will only be available for

¹² Regulation no 1/2009 does not provide for a specific possibility to appeal the decisions of the Ministry of Education, Youth and Science before the court. Therefore, the general procedure to appeal individual administrative acts under the Administrative Procedure Code is applicable. A parent seeking legal protection can hardly rely on receiving legal aid. The granting of legal aid is regulated by the Legal Aid Act which provides that in order to be entitled to legal aid financed by the state one must have a specified low income. A parent of child with disabilities can be granted state funded legal aid to judicially review the Ministry's decision if he/she has earnings of no more than 65 BGN (approximately 32 euros) per month and per parent, and for a single parent with a child under 3 years old, earnings which do not exceed 88 BGN per month (approximately 44 euros). These amounts correspond to the "Guaranteed Minimum Income (GMI)" which the Bulgarian state is obliged to provide to the most indigent Bulgarian citizens who do not have any source of income, meaning that only the most destitute parents can be granted legal aid for these purposes, thereby depriving most parents in need of legal assistance and legal aid from accessing it. The Legal Aid Act does not make specific reference to appeals to Ministry decisions on educational issues.

children with profound disabilities who have been assessed and referred there by specialists. Although Article 9 of Regulation No 1/2009 gives the assurance that children and pupils with special educational needs and/or chronic health conditions should not be admitted to special schools unless their eligibility has been confirmed under the Regulation, it makes no provision for those children who are already admitted to such schools, i.e. there is no transition planning to give the opportunity for children currently enrolled in special schools to be transferred to mainstream schools. It appears that assessment is only made at the point of entry into a special school. If the burden is on the parent or guardian to ensure that another assessment is made to determine whether a child can be transferred from a special school to a mainstream school, then it is essential that they be informed of this right. According to Article 22(6) of Regulation no 1/2009, *“in case of need, the expert commission can reassess the educational needs of children and pupils enrolled into special kindergartens and schools”*, however, there is no criteria which defines when a *“need”* for reassessment may arise under this article.

With regards to children in HMDC with medium or profound intellectual disabilities, the duty to determine a child’s eligibility to a special school through assessment under Article 9 is not applicable to HMDC children. Regulation no 1/2009 indicates that the only options for children with medium or profound intellectual disabilities is education in a special school or schooling within the HMDC itself.¹³ This manifests absolute ignorance of the ECSR decision which precisely found that HMDC children were discriminated against and denied their right to education because they could not access mainstream schools and their only educational options were special schools or education within HMDC. This provision denies their right to inclusive education and reinforces and serves to perpetuate the discrimination these children suffer. The fact that Article 48(4) indicates that education may be carried out on the premises of the HMDC itself, maximises the social exclusion of these children. Furthermore, Article 48(1) implies that those with medium or profound disabilities will only be educated up until Grade 8 (15/16 years of age), which is in accordance with the Bulgarian mandatory school leaving age which is 16 years.¹⁴

Clearly, there is no accommodation made for children at HMDC with medium and profound intellectual disabilities who may not reach the same level of education as other students by the same age. Taken together with the fact that children in special schools are not permitted to repeat a year (see below), this demonstrates that the law formally prescribes inferior quality standards for education for children in special schools. Moreover, they are not given an equal opportunity as other children with special educational needs and/or chronic health conditions to have their eligibility for mainstream

¹³ Article 48(1) Education in special schools is organised for students/pupils with medium and profound intellectual disabilities, as well as multiple disabilities, from the first to the eighth grade.

(2) Students/pupils in the special schools shall not repeat a year.

(3) The special schools under para. 1 also organise schooling for the students with mental disabilities who are placed in homes for children and juveniles with mental disabilities until they reach 16 years of age.

(4) The schooling of students with mental disabilities under the age of 16 placed in homes for children and juveniles with mental disabilities can be carried out in the home itself after previous coordination with the Regional Inspectorate of Education and the Director of the home for children and juveniles with mental disabilities.

¹⁴ According to article 53(1) and (2) of the Bulgarian Constitution, everyone has the right to education and school education is mandatory until 16 years old.

school evaluated, because the law specifies that they are not entitled to inclusive education. This distinction equates to serious discrimination against those with medium or profound disabilities living in HMDC.

Article 48(2) of Regulation No 1/2009 states that children in special schools may not repeat a year. This means that, even if a child has not fulfilled the performance level necessary to complete the current grade, they will nevertheless continue to the next grade, indicating that the goal being set for these special schools is not quality education, but simply that children are kept occupied until Grade 8 (16 years). Students in mainstream schools are able, and sometimes obliged, to repeat a year to ensure they reach a certain educational standard. The justification for this policy and differential treatment for students in special schools is unknown. This retrograde policy demonstrates a lack of understanding of the needs of children with intellectual disabilities who may need to spend more time learning than other children. In this case, sufficient time to learn and assimilate knowledge should also be a part of the supported conditions available for children with special learning needs

ii. Accessibility of Curricula

By accessibility of curricula, MDAC and BHC mean that curricula is able to be accessed by children of diverse learning needs. According to Regulation no 1/2009, accessibility of curricula is not uniform. Distinction is made in Regulation No 1/2009 between children with sensory disabilities and those with intellectual disabilities. The Regulation is deficient because whilst all children with special educational needs and/or chronic health conditions are to be granted individual educational plans (Article 7(5)), only those with hearing or visual disabilities are to be given “*specialised educational plans*”.¹⁵ There is not any specific definition of what a specialised educational plan entails.

The Regulation provides no justification for ensuring children with sensory disabilities have higher quality educational opportunities than children with intellectual disabilities, and in MDAC and BHC’s opinion constitutes discrimination against children with intellectual disabilities in a Regulation which purports to ensure equal educational opportunities for all children. Whilst it is important to make priorities and accommodations for specific groups of children, these must be based on universal principles which apply to all children. Empirical evidence suggests that segregation will emerge when there is focus and priority given which is not drawn from universal principles.¹⁶

Legislation should promote learning of *all* children, not just children with sensory disabilities. It should be noted that the ECSR explicitly stated that Bulgarian schools are not suited to meet the needs of children with intellectual disabilities particularly because

¹⁵ Articles 7(6) and (7) of Regulation No 1/2009 for the Education of Children and Pupils with Special Educational needs and/or chronic diseases.

¹⁶ “Too often, targeted educational policies are disconnected from the “normal” organisation and functioning of the education system, and are perceived as second-class education. There is also a real risk of consolidating homogeneous educational environments through the development of focused policies, reinforcing the process of fragmentation and segregation.” Operti, Brady & Duncombe, *Moving forward: Inclusive education as the core of Education for All*, Prospects, June 2009 issue.

teaching materials are inadequate.¹⁷ Since the ECSR's decision, there has been no measurable progress made on developing teaching materials suitable to children with various intellectual disabilities.

- 3. Train special teams in inclusive education among the teachers and non-pedagogical staff in each school. Increase the number of teachers specialised in inclusive education in all schools. Resources must be ensured for such training and for implementing inclusive education in schools.**

Has the recommendation been met?

Partially

Analysis

This recommendation is partly met because a mechanism has been established to support the integration of children with special educational needs into mainstream schools whose functions are consultative, educational, rehabilitative and coordinative. However, it is not clear how teachers will be trained to enable them to ensure the success of inclusive education through their own methods and in their own classrooms.

In the *MDAC v. Bulgaria* decision, the ECSR held that teachers in mainstream schools were insufficiently trained to teach children with intellectual disabilities.¹⁸ The need to make expertise and resources available with respect to inclusive education is partially addressed by Article 6 of Regulation No 1/2009 which concerns the integration of children into mainstream education, with the aid of "resource centres". The "Regulation for the Activities of the Resource Centres for Supporting the Integrated Education and Upbringing of Children and Students with Special Educational Needs 2006" (*hereinafter* "Regulation on Resource Centres") defines Resource Centres as "*pedagogical institutions independent from schools which are part of the national system of education. There shall be one in every administrative region of the country*".¹⁹

According to the Regulation on Resource Centres, the main aim of the resource centres is to support the successful integration of children and students with special educational needs into mainstream educational environments and to aid the creation of state policy for the education of children and students with special educational needs. Resource centres function via a team of specialists comprising resource teachers, psychologists, and speech and hearing specialists. The main functions of the centres are consultative, educational, rehabilitative and coordinative.²⁰

The consultative function means that resource centres are supposed to consult parents about the different forms and techniques of the work with children with special educational needs, as

¹⁷ *MDAC v. Bulgaria* (no 41/2007), 10 June 2008, §44.

¹⁸ *MDAC v. Bulgaria* (no 41/2007), 10 June 2008, §44.

¹⁹ Article 2(1), Regulation for the Activities of the Resource Centres for Supporting the Integrated Education and Upbringing of Children and Students with Special Educational Needs 2006.

²⁰ Article 3(1), Regulation for the Activities of the Resource Centres for Supporting the Integrated Education and Upbringing of Children and Students with Special Educational Needs 2006.

well as the use of special literature and various kinds of therapies, considering the individual needs of every child. The resource centres are tasked to support the kindergartens and the schools when planning the necessary resources and the material base for the adaptation of the space in the classrooms in order to ensure complete education for the integrated children.

The educational and rehabilitative function of the resource centres entails participation of specialists in special teams for complex pedagogical evaluation in the regional inspectorates when evaluating the educational needs of the children and students with disabilities in order to direct them to a certain educational plan; participating in creating an educational plan with other specialists for the integration of children with special educational needs together with the teachers in the groups in the kindergartens or classes in schools where integrated education is practised. It also includes the organisation and participation in the advancement of the knowledge and skills of the teachers who work with children and students with special educational needs.²¹

The coordinative function includes the interaction with parents, children, social partners, NGOs and all administrative bodies which have activities related to integrated education. The Regulation on Resource centres places an obligation on the resource centre to organise regional initiatives concerning integrated education issues.

While there is no mention in Regulation no 1/2009 of the allocation of resources for these purposes, information received from the MEYS in October 2009 states that in 2009, resource centres were funded to the amount of 2518 BGN (approximately 1100 EUR) per child, and in total they reported that only 10% of these funds go into mainstream schools where children are integrated. Since January 2008, resource centres apply a system of delegated budgets which gives the director of the resource centre the right to independently determine the number of personnel and spending within the budget. Such a system does not provide for a standardised quality of service across all resource centres resulting in hindrance to their important consultative, educational, rehabilitative and coordinative functions.

Although the creation of resource centres is an important step, there is no clear outline of the training which the resource centres should provide to teachers in mainstream schools, and whether this will include issues of inclusive education in particular. The way in which funding has and is being allocated to resource centres and how they are dispensed in individual resource centres does not guarantee emphasis on providing inclusive education assistance and services, particularly in mainstream schools. Furthermore, Regulation no 1/2009 does not consider how inclusive education is to be enhanced and sustained, for example through long-term training, or through incorporating inclusive education into core teacher training curricula to infuse the values and principles of inclusive education from the beginning of teachers' careers.

With respect to educational materials, according to information received from the MEYS in October 2009, 300,000 BGN (approximately 154,000 EUR) was spent in 2008 on books and teaching resources for students in special schools, while 400,000 BGN (approximately 205,000 EUR) was allocated to two schools²² for books and teaching resources in Braille for

²¹ Article 9, Regulation for the Activities of the Resource Centres for Supporting the Integrated Education and Upbringing of Children and Students with Special Education Needs 2006.

²² These two schools are: the Dr. Ivan Shishmanov school for children with impaired sight in Varna, and the Louis Braille secondary school in Sofia.

visually impaired children. In 2009, 300,000 BGN has been allotted for the purchase of books and teaching resources, and the same amount has been allocated for 2010 for both students in special schools and students integrated into mainstream schools. Students receive these educational materials for free from first to seventh grade.²³

MDAC and BHC question what is reasonable and objective justification to explain the difference in the amount of financial resources allocated for educational resources between children with sensory disabilities and children with intellectual disabilities. While two specific schools for visually impaired students benefitted from 400,000 BGN in one year for educational resources, the lesser amount of 300,000 BGN was allotted for educational materials in *all* special schools and mainstream schools where children with special educational needs were integrated across Bulgaria. Allocation of differentiated amounts based on the type of children's disability appears to simultaneously favours and neglects a certain category of students and is seemingly discriminatory, and MDAC and BHC ask the Government to explain its approach.

4. Open a permanent dialogue and build partnerships with existing civil society initiatives and organisations working for child welfare reform so that they are able to play a role in the planning, execution, and monitoring of education for children with disabilities.

Has the recommendation been met?

No

Analysis

At the October 2008 roundtable in Sofia, a representative of the Ministry of Labour and Social Policy (MLSP) announced the formation of an inter-ministerial working group to address the issues raised in the collective complaint *MDAC v. Bulgaria*, and to comply with the ECSR's decision. However, it appeared later that the aim of the working group was solely to draft a response to the ECSR's decision. The working group's response submitted to the Council of Europe Committee of Ministers has not been made public

Limited progress has been made in the dialogue between the government and civil society initiatives and organisations. Following joint protests and petitions by civil society organisations, which continued into the middle of February 2009,²⁴ an NGO entitled the "Movement of Bulgarian Mothers" was invited to work with the State Agency for Child Protection (SACP) whose analysis department had started drafting a plan for supportive measures for families and children with disabilities, including for the inclusive education of disabled children.

Despite this step towards dialogue with civil society, such a positive approach has not been applied consistently across ministries. When the Movement of Bulgarian Mothers sent requests to the government for cooperation, the MLSP replied that it works with all NGOs which are

²³ Council of Ministers Ordinance no 104/10.05.2003 for free books and teaching resources.

²⁴See <http://www.bgpetition.com/roditeli-na-deca-s-uvregdania-ot-ciala-Balgria/index.html>.

nationally represented and that the Movement of Bulgarian Mothers is not one of them because it lacks formal registration as an NGO.²⁵ This indicates reticence on the part of the government to engage on a consistent basis with those civil society associations and NGOs dealing with the actual problems of children with disabilities. It also illustrates the need for a single state authority to be responsible for coordinating policy across governmental departments to ensure the right to education for all children.

Again, MDAC and BHC remind the Bulgarian government of the requirements under the above-cited Article 4(3) of the UN Convention on the Rights of Persons with Disabilities which mandates inclusion into policy-making by persons (including children) with disabilities and their representative organisations.

5. Establish and implement a comprehensive data collection system which takes into consideration the number of children with disabilities (disaggregated by age, sex, type of disability), attending mainstream schools, special schools, or receiving schooling within institutions, completing primary and/or secondary schooling; statistics concerning types of institutions and educational programmes pursued by children residing therein, and the teacher to child ratio for educational programmes in institutions.

Has the recommendation been met?

Partially

Analysis

Data to be collected

Article 11 of Regulation No 1/2009 outlines the type of data on children and pupils with special educational needs and/or chronic health conditions which should be collected and stored by the Ministry of Education, Youth and Science.²⁶ However, the Regulation fails to articulate types of data, and so this recommendation is yet to be fulfilled. The data should contain information about the child's age, gender, first language, ethnic origin, place of residence, attendance to kindergarten, healthcare condition (as per the International

²⁵ Under Bulgarian law, it is not illegal for an NGO not to be formally registered but the MLSP had problems to recognise it as a partner without the formal registration status.

²⁶ Article 11(1) The Ministry of Education, Youth and Science (the former Ministry of Science and Education) shall maintain a data base for the children and students with special educational needs and/or chronic health conditions, who are integrated in mainstream schools or are educated in special kindergartens or special schools.

(2) The database shall contain information regarding the names of the children or students, their health condition and the kindergarten or school they attend. The requirements of the Personal Data Protection Act must to be met when dealing with this information.

(3) In the 7-day period from the registration of the child or student with special educational needs and/or chronic health conditions the Director of the kindergarten or the school shall inform the Head of the Regional Inspectorate of Education of the registration.

(4) Three times per year – by 31 October, 28 February and 30 June - the Head of the Regional Inspectorate of Education shall send to the Ministry of Education, Youth and Science (formerly the Ministry of Science and Education) summarised information according to para. 2 about the kindergartens and schools from the region.

Classification of Diseases edition 10),²⁷ social status of the family and past experience in education. The government must elaborate mechanisms for disaggregated data collection for all children with disabilities, regardless of their place of residence or ethnic origin.

In January 2009, the head of the Regional Inspectorate of Education of Sofia issued an order to the directors of schools and kindergartens within Sofia to collect and file data about children for which there is a "suspicion" of decline in their psycho-physical development.

Even though the intention was to identify children with special educational needs in order to provide them with support,²⁸ MDAC and BHC are of the opinion that the collection of such information violates the right to privacy of children and their families under data protection legislation and also infringes on their right to education and right to non-discrimination. BHC representatives were invited to meet the director of the Regional Inspectorate of Education after they filed a complaint raising their concerns to the MLSP, Agency for Social Assistance, SACP, and to the Regional departments of the SACP, which was also disseminated in the public domain through internet and print media. As a result the approach was changed but no details were made public. There are no records which provide reliable and adequate data about children with special educational needs; there is no requirement under the law to collect such data and hence it is not possible to make conclusions about the need to allocate resources in this area.

Coordination of data collection

There are no provisions for the exchange and coordination of data amongst the Ministry of Health, the Ministry of Education, Youth and Science, the Ministry of Social and Labour Policy and the State Agency for Child Protection on each child with a disability. The activity should be coordinated by a single state authority. This state authority must be responsible for setting a realistic deadline for each stage, and controlling every step of the process of collection and analysis.

Responsibility for collection of data

²⁷ ICD-10 is the international standard diagnostic classification for clinical use. It is used to classify diseases and other health problems recorded on many types of health and vital records including death certificates and health records. In addition to enabling the storage and retrieval of diagnostic information for clinical, epidemiological and quality purposes, these records also provide the basis for the compilation of national mortality and morbidity statistics by World Health Organisation (WHO) Member States. See <http://www.who.int/classifications/icd/en/>.

²⁸ According to the Law on Child Protection and the Regulation for the implementation of the Law on Child Protection, the departments for child protection are responsible for interfering in a family even in cases where the parent is unable to accept that his/her child has learning difficulties or special educational needs. The responsibility to inform the departments for child protection for such problems is given to school directors who have the duty to file a signal (Article 9, paragraph 2, provisions 4 and 5 from Regulation for the Application of the Child Protection Act, as well as other provisions of secondary legislation). According to the director of the Regional Inspectorate of Education, despite the existence of such provisions, the mechanism of signals does not function properly which led them to begin collection of data. Although the intention was to identify children with special needs in order to provide them with appropriate support, the method used was violated children's right to privacy. Moreover, such a method, in the long term, sustains the lack of communication and coordination amongst Ministries with respect to the education of all children.

Article 11 of Regulation No 1/2009 does not specify the mechanism by which collection of data should happen. MDAC and BHC recommend that data collection be planned in detail, and responsibilities for implementation be specified for schools (including special schools), HMDC and other children's institutions, child protection departments, regional healthcare departments, and medical doctors.

- 6. Ensure implementation of inclusive education by disseminating to all stakeholders information on legislative and policy changes, identifying responsibilities and deadlines for action, and providing any necessary training or consultations.**

Has the recommendation been met?

No

Analysis

Regulation No 1/2009 does not refer to the provision of information. In a meeting on 6 March 2009, the Director of the Regional Inspectorate of Education of Sofia explained to BHC about the lack of understanding by the directors of the HMDC on the right to education and their responsibilities as directors to ensure the implementation of this right. The ECSR's decision itself noted that HMDC directors could have been informed about and trained on the new legislation and action plans without excessive cost.²⁹ This has not been undertaken. Mechanisms must be put in place to inform and consult with all stakeholders (parents, civil society, teachers and other child development professionals) to ensure that the inclusive education system is transparent, assessable, meets beneficiaries' needs and is sustainable.

- 7. Develop a transition plan towards inclusive education which is incorporated into legislative and policy frameworks and addresses the specific situation of children living in "Homes for Mentally Disabled Children" (HMDC). Ensure that such a plan identifies duty bearers, includes performance indicators (see Recommendation No. 8, below), and is disseminated widely.**

Has the recommendation been met?

Partially

Analysis

²⁹ MDAC v. Bulgaria (no 41/2007), 10 June 2008, §47.

Regulation No 1/2009 makes reference to HMDC in Article 48(3) and (4),³⁰ but the focus is on education within the HMDC themselves, rather than on mechanisms to ensure inclusive education for children living in these institutions. The Regulation also fails to provide for a transition plan towards implementing inclusive education for children in HMDC. At the MDAC and BHC roundtable event in October 2008, the representative of the Ministry of Education and Science told participants that a strategy had been planned for 2009 towards inclusive education for children with disabilities which would be backed up by the necessary financial resources. She told participants that the strategy included making equipment available to provide a supportive environment and to enable children to acquire skills towards independent and self-sufficient living. To the best of MDAC and BHC's knowledge, none of this has happened.

According to the Governmental Report for the Implementation of the National Program for Child Protection from 2008, a total of 1,018 schools and kindergartens educated children with special educational needs in 2008, of which 234 were architecturally adapted (50 were adapted in 2008). These schools had 5,573 pupils with disabilities during 2008, with the support of 933 resource teachers and other specialists. The criteria for whether a school or kindergarten has undergone an architectural adaptation is unclear, as is the accessibility of these educational establishments to children with various disabilities.

Despite the efforts of BHC and MDAC to support the government in creating an action plan to ensure inclusive education for all children with mental disabilities,³¹ the government has declined any such assistance. According to information from the State Agency for Child Protection (SACP), in February 2009, 23 Homes for Children and Juveniles with Mental Disabilities (HCJMD) provided education for children in homes or in schools. Between 23 and 27 April 2009, BHC made inquiries in four of these HCJMD and learned that the proportion of children from HCJMD who receive any form of education remains between 17% and 32%. The percentage of children from HCJMD who study in a secondary mainstream school is just under 10%.³² According to information from the Ministry of Education, Youth and Science (MEYS), during 2009, five special schools were closed and two have been merged into one. According to the MEYS, around 7,700 children continue to receive special education in 81

³⁰ Article 48(3) The special schools under para. 1 also organise schooling for the students with mental disabilities who are placed in homes for children and juveniles with mental disabilities until they reach 16 years of age.

(4) The schooling of students with mental disabilities under the age of 16 placed in homes for children and juveniles with mental disabilities can be carried out in the home itself after previous coordination with the Regional Inspectorate of Education and the Director of the home for children and juveniles with mental disabilities.

³¹ Including through lobbying together with other NGOs, soliciting cooperation through telephone calls and email correspondence.

³² The institution in the village of Gorski Senovec replied that the total number of the children living there is 56 of whom 5 children study in mainstream school and 10 in a special school in a nearby village. The institution in the village of Gomotarci replied that 57 children live in the home of whom 18 study – 6 in the mainstream school, 12 in the special school in the near city, another 12 were referred to the assessment commission to be involved in integrated education. In the institution in the town of Mezdra, 72 children live of whom 17 study, 3 in a mainstream school and 14 in the special school in the near city. In the institution of Vidrare, out of 88 children living there, 15 study – 13 in a mainstream school and 2 in a special one. The data shows that the proportion of children with disabilities in institutions who receive education ranges between 17% and 32%. The proportion of those who study in mainstream schools is just under 10%.

special schools. Further, during 2008, 55 training sessions for 519 teachers for children with special educational needs have been held. This indicates that the focus largely remains on providing education through special schools rather than implementing a programme of inclusive education in mainstream schools.

According to information received from the SACP this year, the number of children with disabilities³³ in Bulgaria is around 20,000, of which only 5,573 have been integrated into mainstream schools and another 7,700 are studying in special schools. The trend towards special school education remains. Those who are neither in a mainstream school or a special school most probably have never been part of the education system, which only exacerbates their current and future social isolation.

Furthermore, it is unclear why the SACP and MEYS cannot combine their efforts to provide education for every child in Bulgaria. There needs to be active coordination before any real progress can be made.

As mentioned in the analysis of Recommendation 4 (see above), the NGO Movement of Bulgarian Mothers has been involved in drafting a plan for supportive measures for families and children with disabilities with the SACP. The plan addresses the need for inclusive education of disabled children. The draft of the plan foresees that many authorities will coordinate themselves to achieve inclusive education. However, there is no clear data on the number of children, the diversity of their needs and the costs of integration for each child. The deadlines are not fixed, ranging from 2009 to 2012, and it does not specify the timeframe in terms of months. The plan envisages that the budget for all activities would be allocated within the approved budget of each Ministry and does not mention explicitly what funds will be required for each activity, who is in charge of allocating them and when this should happen.

The fact that only one body (SACP) is responsible for this plan indicates that no comprehensive effort is being made to secure the rights of these children. Uncoordinated action with ministries and departments focused on their policy silos may well negatively affect the effective implementation of a transition plan.

- 8. Adopt performance indicators by which provision of education, whether inclusive or special, can be measured and assessed by the government and civil society stakeholders. Specify these performance indicators in the transition plan mentioned in Recommendation No. 7, above.**

Has the recommendation been met?

No

Analysis

³³ It is assumed that the SACP makes use of the definition provided in Additional Article 1(1) of the Law on the integration of people with disabilities (Prom. SG. 81 17 Sep 2004, in force since 1 January 2005), where “‘disability’ is each loss or impairment in the anatomic structure, in the physiology or in the psyche of a given individual.”

No performance indicators have been adopted in Regulation No 1/2009 or elsewhere related to the implementation of inclusive education. Developing indicators is essential as a means to monitor action taken, evaluate progress, identify deficiencies, and adjust plans in the light of evaluation. Examples of indicators are given by the UN Special Rapporteur on the Right to Education:

- a quantitative indicator could be compiling information on the number of children with disabilities enrolled in mainstream schools;
- a qualitative indicator might describe the quality of the curricula and the extent to which disability is sidelined within it.³⁴

9. Ensure that the Ministry of Education and Science is allocated sustainable financial resources to implement the right to education for children with disabilities, giving priority to their inclusion into mainstream schools.

Has the recommendation been met?

No

Analysis

There is no publicly available information about the financial resources allocated for the implementation of the right to education for children with disabilities. The “National Programme for the Protection of the Child for 2009”,³⁵ does not specify the financial resources to be allocated for its implementation. It is known in general that important objectives of that kind should be fulfilled “within the limit of the approved budget”,³⁶ but there appears to be no ring-fenced budget allocated to a particular governmental body for the implementation of inclusive education.

10. Establish a formal monitoring system of children’s institutions which closely examines the right to education of children with disabilities. Ensure that monitoring regularly evaluates how management secures the full range of human rights to which children are entitled, and incorporates concrete steps to follow up recommended actions. Monitoring must also involve equal participation of civil society organisations. Information relating to monitoring methodology, visits and reports should be made publicly available.

Has the recommendation been met?

No

Analysis

³⁴ Special Rapporteur on the Right to Education, ‘The right to education of persons with disabilities’, A/HRC/4/29, 19 February 2007, §45.

³⁵ See <http://www.stopech.sacp.government.bg/file.php?fid=282>

³⁶ National Programme for the Protection of the Child for 2009, see <http://www.stopech.sacp.government.bg/file.php?fid=282>

In 2003, the MLSP issued the Regulation for the Criteria and Standards for Children's Social Services. According to that regulation "[t]he Chairman of the State Agency for Child Protection or his authorised subordinates control the observation of the standards for the quality of social services for children through planned periodical inspections or as a consequence of signals for infringement of the standards for the quality of social services for children".³⁷ These inspections lack specific and measurable indicators by which to determine the quality of the education given in children's institutions, including HMDC, in order to provide objective assessments. There are no regulations regarding how education should be monitored. No monitoring system is mentioned in Regulation No 1/2009. In fact, information received from the MEYS in October 2009 states that, as of yet, there is no system or methodology to monitor nor evaluate the effectiveness of the integration of children with disabilities into mainstream schools.

11. Introduce legislation to Parliament which would insert a specific prohibition of discrimination on the ground of disability in the Bulgarian Constitution and the Public Education Act.

Has the recommendation been met?

No

Analysis

No such legislation has been introduced before Parliament. Such legislative reform would constitute a symbolic step which will raise the status of the government's efforts to eradicate discrimination such as that found in the ECSR's decision. It will prove to those affected by this discrimination and the international community that the government is actively committed to providing equal educational opportunities for all children.

³⁷ See Article 49, par. 1 and 2 of the Regulation for the Criteria and Standards for Children's Social Services.

VII. Conclusions

The above eleven recommendations were made in October 2008 and were designed to bring laws, policies and practices in place to meet the requirements set out in the ECSR's decision. Further steps remain to be taken to demonstrate the government's commitment to this urgent matter.

In its decision in *MDAC v. Bulgaria*, the European Committee on Social Rights noted that "*Bulgaria's financial constraints cannot be used to justify the fact that children with intellectual disabilities in HMDC cannot enjoy the right to an education*".³⁸ BHC and MDAC continue to encourage the Bulgarian government to fulfil all of the recommendations as set out in October 2008, and used in this report as indicators towards implementation of the ECSR's decision. The government should prioritise action to the fulfilment of its political promises and translate that into concrete legislation which is clear on the inclusive education approach and does not simply act to disguise perpetuating a segregated system. Inclusive education must be universally applied to all children and not just a certain category of children with milder forms of disabilities or only physical or sensory disabilities. Such an approach is not consistent with inclusive education principles and results in further isolation of neglected groups. Data must be collected. Training and resources must be provided to respond to the diverse learning needs of *all* children. Information must be disseminated to all stakeholders and they must be actively solicited and engaged in order to effectively introduce and sustain inclusive education. Most importantly, parents and children must be informed of their rights so that they may actually benefit from these changes.

MDAC and BHC recommend as a first step that the government assigns policy coordination of inclusive education to the Ministry of Education, Youth and Science (MEYS). An active coordination by the Ministry will ensure that all actors in this process are working towards a common goal. Not only could coordination speed up and simplify the introduction of inclusive education, but it could facilitate an ongoing dialogue between stakeholders, and help the government to build partnerships with civil society organisations. This in turn is likely to increase the effective implementation of laws and policies, as well as data collection and information dissemination.

These key steps are vital for the implementation of inclusive education, which means that children of *all* abilities and learning needs *do learn* together. This is important because by promoting diversity in the classroom, children with special learning needs will not only reap the benefits of better quality education, but as a result of better education, also better quality lives; inclusive education works to eradicate discrimination against these children in society as a whole, and fosters a more tolerant generation of children in Bulgaria.

It has been one year since the ECSR decision became public. As it stood one year ago, and as it continues to be today, the cognitive, emotional and physical development of the country's most vulnerable children are at stake. The matter is urgent. MDAC and BHC hope that the government will create the opportunity for renewed action. MDAC and BHC are willing partners for cooperation and are available to provide assistance and advice to ensure that *all* children in Bulgaria are able to realise their right to inclusive education

³⁸ *MDAC v. Bulgaria* (no 41/2007), 10 June 2008, §47.