

**DECISION ON ADMISSIBILITY**

**26 June 2007**

**Mental Disability Advocacy Center (MDAC) v. Bulgaria**

Complaint No. 41/2007

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 223<sup>rd</sup> session attended by:

Mrs Polonca KONČAR, President  
Mssrs Andrzej SWIATKOWSKI, First Vice-President  
Tekin AKILLIOĞLU, Second Vice-President  
Jean-Michel BELORGEY, General Rapporteur  
Alfredo BRUTO DA COSTA  
Nikitas ALIPRANTIS  
Stein EVJU  
Mrs Csilla KOLLONAY LEHOCZKY  
Mssrs Lucien FRANCOIS  
Lauri LEPPIK  
Colm O'CONNOR  
Mrs Monika SCHLACHTER  
Birgitta NYSTRÖM

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 15 February 2007, registered on 20 February 2007 as number 41/2007, lodged by the Mental Disability Advocacy Center (MDAC) and signed by its Executive Director, Mr Oliver Lewis, requesting the Committee to find that Bulgaria is not in conformity with the Article 17§2, independently and in conjunction with Article E of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter and, in particular, to Articles 17 and E which read as follows:

**Article 17 – The right of children and young persons to social, legal and economic protection**

Part I: "Children and young persons have the right to appropriate social, legal and economic protection".

Part II: "With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- b to protect children and young persons against negligence, violence or exploitation;
- c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- 2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

**Article E – Non-discrimination**

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status".

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201<sup>st</sup> session and revised on 12 May 2005 at its 207<sup>th</sup> session ("the Rules");

Having regard to the observations of the Bulgarian Government on the admissibility received on 21 May 2007;

Having regard to the observations of MDAC received on 19 June 2007, in response to those of the Bulgarian Government;

Having deliberated on 26 June 2007;

Delivers the following decision, adopted on the above date:

1. MDAC alleges that legislation in Bulgaria is not in conformity with Article 17§2 independently and in conjunction with Article E of the Revised European Social Charter insofar as children living in homes for mentally disabled children in Bulgaria receive no education.

## **THE LAW**

### **As to the admissibility conditions laid down by the Protocol and Committee's Rules of Procedure:**

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Bulgaria on 7 June 2000 and entered into force for this state on 1 August 2000, the complaint has been submitted in writing and concerns Article 17§2 independently and in conjunction with Article E of the Revised Charter, a provision accepted by Bulgaria when it ratified this treaty on 7 June 2000 and to which it is bound since the entry into force of this treaty in its respect on 1 August 2000.

3. Moreover, the grounds for the complaint are indicated.

4. The Government considers that the conditions of admissibility provided for by Article 3 of the Protocol are not fulfilled since, in its opinion, MDAC has no particular competence in the areas of the complaint. It specifies that MDAC's sphere of activity is protecting the human rights of persons with psychological problems, particularly with a view to improving the quality of life of people with mental disabilities, and that these are issues which fall within the ambit of Article 15 of the Revised Charter which Bulgaria has not accepted.

5. The Committee notes firstly that, in accordance with Articles 1 b) and 3 of the Protocol, MDAC is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints.

6. The Committee notes that the MDAC's sphere of activity concerns in a general way the protection of rights of people with mental disabilities including questions linked to the education of children with disabilities. Consequently, the Committee finds that the MDAC has particular competence in the areas of the complaint.

7. The complaint is signed by Mr Oliver Lewis, who is the Executive Director of MDAC, entitled to represent the complainant organisation under its statutes, which have been registered before the Court of Budapest (*Fővárosi Bíróság*). The Committee therefore considers that the complaint complies with Rule 23 of the Rules.

**Concerning the arguments of inadmissibility raised by the Bulgarian Government:**

8. In its observations on admissibility, the Government argues that the case relates to Article 15§1 of the Revised Charter since it covers the right of persons with disabilities, an article that Bulgaria has not accepted, but not the right of children and young people to social, legal and economic protection provided for by Article 17§2, as MDAC maintains.

9. The Charter was conceived as a whole and all its provisions complement each other and overlap in part. It is impossible to draw watertight divisions between the material scope of each article or paragraph. It therefore falls to the Committee to ensure at the same time that obligations are not imposed on States stemming from provisions they did not intend to accept and that the essential core of accepted provisions is not amputated as a result of the fact it may contain obligations which may also result from unaccepted provisions.

10. This is the case with education. The Committee considers that the fact that the right of persons with disabilities is guaranteed by Article 15§1 of the Revised Charter does not exclude that relevant issues relating to the right of children and young persons with disabilities may be examined in the framework of Article 17§2 (see Conclusions 2003, Bulgaria, p. 66). The complaint is therefore as regards its subject matter admissible with Article 17§2. As for the allegations in this case, the Committee will decide the extent to which they concern Article 17§2 during its assessment of the merits.

11. For these reasons, the Committee, on the basis of the report presented by Mrs Polonca Končar and without prejudice to its decision on the merits of the complaint,

**DECLARES THE COMPLAINT ADMISSIBLE**

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the defending state of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 28 September 2007.

Invites MDAC to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 28 September 2007 should they so wish.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to make observations by 28 September 2007.

Polonca KONČAR  
Rapporteur  
President

Régis BRILLAT  
Executive Secretary