



Mental Disability Advocacy Center v. Bulgaria

(No 41/2007, European Committee of Social Rights)

Analysis and Recommendations

This paper, written by the Mental Disability Advocacy Center – the applicant organisation in the case – and the Bulgarian Helsinki Committee, summarises the findings of the European Committee of Social Rights of the Council of Europe in its decision in the collective complaint Mental Disability Advocacy Center v. Bulgaria. It provides an analysis of the decision and then highlights action points which the Bulgarian government must take to comply with the decision and current international standards on education. For further information please contact MDAC (www.mdac.info) or BHC (www.bghelsinki.org) via email: mdac@mdac.info; bhc@bghelsinki.org

1. The complaint

On 15 February 2007, the Mental Disability Advocacy Centre (MDAC) – an international human rights organisation with participatory status with the Council of Europe - lodged a so-called “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. The collective complaint argued that this situation violated Article 17(2) of the Revised European Social Charter, which 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 schools”. The collective complaint alleged also that the violation of the right to education was a result of discrimination against the children on account of their disabilities, a violation of Article E of the Revised European Social Charter which protects against discrimination. Both of these Articles were ratified by the Bulgarian government in June 2000.

The complaint argued that activities in “Homes for Mentally Disabled Children”, do not constitute education. These “Homes for Mentally Disabled Children” are under the responsibility of the Ministry of Labour and Social Policy, and not the Ministry of Education and Science. Governmental statistics on the number of these Homes vary from 24 to 27 “Homes for Mentally Disabled Children”¹ with the number of children residing in them ranging from 1193 to 3042.²

Up until 2002, children living in “Homes for Mentally Disabled Children” were considered uneducable under Bulgarian law.³ In 2002, the relevant legislation was changed and the Bulgarian government obliged itself in

¹ **24** Homes according to information prepared by the Bulgarian Ambassador to the UK, Dr Lachezar Matev, in September 2007 in reply to a letter sent by the production team of BBC documentary “Bulgaria’s Abandoned Children”; **25** Homes according to the 2007 State Report on implementation of the UN Convention on the Rights of the Child submitted by the Bulgarian government, November 2007, CRC/C/BGR/2, §92; **26** Homes according to a 2007 news release from the State Agency for Child Protection ; **27** Homes according to a United Nations press release, “Committee examines reports of Bulgaria on Optional Protocols to Convention on Rights of the Child ”, 46th Session, 24 September 2007 ;

² **1193** children according to a 2007 news release from the State Agency for Child Protection ; **1310** children in 2006 according to the State Agency for Child Protection, “Evaluation of the specialized institutions for children”, SACP, October 2006, see *Assessment Report On the Conditions and Perspectives of the Institutions for Children in Bulgaria*, Bulgarian Helsinki Committee, November 2006, p.39; **1552** children according to the 2007 State Report on implementation of the UN Convention on the Rights of the Child submitted by the Bulgarian government, November 2007, CRC/C/BGR/2, §92; **1618** children in 2006 according to the Ministry of Labour and Social Policy, “Child Protection Activities”, MLSP, June 2006; see *Assessment Report On the Conditions and Perspectives of the Institutions for Children in Bulgaria*, Bulgarian Helsinki Committee, Bulgarian Helsinki Committee, November 2006, pp. 38-43; **3042** children, data of the Agency for Social Assistance, ref. 92-37/22.02.2006, from March 2006, cited in *Alternative Monitoring Report on Bulgaria*, Save the Children UK, 2006, p 7 and 13.

³ Prior to 2002, education of children with disabilities was regulated by the 1977 *Instruction No. 6 on the placement of children and pupils with physical or mental disabilities in special schools and special educational disciplinary establishments* of the Ministry of Education and the Ministry of Health Care. This Instruction ordered that children with mild intellectual disabilities be educated in special schools, while denying education to those with moderate, severe and profound intellectual disabilities, who were classified as uneducable. Consequently, such children did not have access to education of any kind.

domestic law to provide education to all children.⁴ The collective complaint argued that the 2002 law has never been implemented.

The collective complaint argued that this denial of the right to education is evidenced in three ways. First, the latest available governmental information indicates that only 6.2% of children living in “Homes for Mentally Disabled Children” have been enrolled in schools.⁵ Second, mainstream schools are not adapted to accommodate the abilities and needs of children from “Homes for Mentally Disabled Children”.⁶ Third, staff of “Homes for Mentally Disabled Children” provide no or wholly inadequate education for the resident children.

The current educational system in Bulgaria therefore denies the right to education for children living in “Homes for Mentally Disabled Children”. The collective complaint argued that not only is the right to education denied, but that the denial is discriminatory. The fact that only 6.2% of children from “Homes for Mentally Disabled Children” receive schooling clearly gives rise to an inference of discrimination based on disability for which the Bulgarian Government is directly responsible.

Lastly, the collective complaint argued that Bulgaria cannot invoke a lack of resources or the progressive realisation of rights as a defence to the discriminatory denial of the right to education, as the situation is a result of serious and unreasonable policy failures on the side of the Bulgarian government.

2. The decision of the European Committee of Social Rights

The collective complaint was declared admissible by the European Committee of Social Rights on 26 June 2007, and the ECSR issued its decision on the merits on 10 June 2008. In its decision, the European Committee of Social Rights found that there was a violation of Article 17(2) (right to education) alone and in conjunction with Article E (non-discrimination) of the Revised European Social Charter because children with moderate, severe and profound intellectual disabilities residing in “Homes for Mentally Disabled Children” do not have an effective right to education and this is due to disability-based discrimination.

2.1. Denial of the right to education

⁴ In August 2002, the Ministry of Education and Science issued *Decree No. 6 on the Education of Children with Special Needs and/or Chronic Diseases*, which superseded the 1977 Instruction. This Decree entitles children with any type of intellectual disability to study in special schools or mainstream schools of their parents’ choice. According to Article 2 para. 1 of the Decree, children with special educational needs and/or chronic diseases are to be integrated in kindergartens and schools.

⁵The *Report on the situation of the specialized institutions for children with disabilities*, Bulgarian State Agency for Child Protection, Sofia, 2005 (*hereinafter* “the State Agency 2005 Report”), pp. 4-5. *The State Agency 2005 Report* is based on visits to 19 institutions housing children with disabilities, housing in total 1,159 children. According to this report, 39 (3.4%) of children living in the visited homes were enrolled in special schools. Further analysis of this data show that only 32 children with intellectual disabilities were integrated into mainstream primary schools, which represents 2.8% of children living in the visited homes. Hence, 6.2% of children from these institutions receive schooling.

⁶ Mainstream schools lack curricula, textbooks and resources to adjust the school environment. Their teachers are generally not offered any training in special education, nor do they have experience of teaching children with special needs. See *Rights of People with Intellectual Disabilities – Access to Education and Employment*, Bulgaria Monitoring Report, OSI EU Monitoring and Advocacy Program, Budapest, 2005 p. 52-53.

The European Committee of Social Rights found a violation of Article 17 (2) of the Revised Charter for several reasons. Although it recognised the Bulgarian government's efforts to respect the educational rights of children with disabilities living in institutions through adopting legislation and drafting action plans, the Committee highlighted deficient implementation of legislation and policies, and noted that there were inadequate standards for the right to education and equality of educational opportunities.

In its decision, the European Committee of Social Rights referred to the educational standards established by the United Nations Committee on Economic, Social and Cultural Rights, which considered that education must fulfil the criteria of availability, accessibility, acceptability and adaptability. The European Committee of Social Rights found

that the Bulgarian educational standards were inadequate because mainstream educational institutions and curricula were not accessible in practice: only 2.8% of children with intellectual disabilities residing in institutions were integrated in mainstream primary schools, whereas integration should be the norm. The European Committee of Social Rights found also that only 3.4% of the children attended special classes, which also shows that special education is neither accessible to children living in "Homes for Mentally Disabled Children". Further, mainstream schools are not adapted to the needs of children with intellectual disabilities, teachers are not appropriately trained, nor are resources developed to cater to the educational needs of children with disabilities. Moreover, due to the absence of primary educational opportunities, children with disabilities are ineligible to enter secondary education

The Bulgarian government argued that the educational rights of children living in "Homes for Mentally Disabled Children" are being implemented progressively due to financial constraints. However, the European Committee of Social Rights rejected this argument, finding instead that the Bulgarian government has failed to fulfil the three criteria consistent with progressive realisation of rights, these three criteria being (1) a reasonable timeframe, (2) measurable progress, and (3) financing consistent with the maximum use of available resources. The European Committee of Social Rights observed that any progress has been very slow and has been limited to the adoption of legislation and policies which have been followed through with little or no practical implementation. In addition, the European Committee of Social Rights found that the Bulgarian government has failed to take simple measures such as disseminating information on existing legislation to "Homes for Mentally Disabled Children" or to primary schools. Nor has the government ensured that key staff of such Homes and educational institutions received training to equip them with the skills and knowledge to implement the laws and policies. The European Committee of Social Rights noted that such training could have taken place without much additional cost.

2.2. Violation of the right to non-discrimination

With respect to the violation of Article 17(2) in conjunction with Article E of the Revised Charter, the European Committee of Social Rights stated that although disability is not explicitly listed as a prohibited ground of discrimination in Article E, it is adequately covered by the reference to "other status."

Recalling that the failure to take appropriate measures to take account of existing differences may also amount to discrimination, the European Committee of Social Rights reiterated its principle that the obligation to provide evidence in support of the claims should be appropriately adjusted when it comes to matters of discrimination, hence, where MDAC has provided information which attests to the low percentage of HMDC children receiving an education in comparison with the rest of children, it was for the Bulgarian government to refute this. However, the Bulgarian government provided neither evidence nor justification for why children living in the "Homes for



Mentally Disabled Children” are disproportionately denied their right to education, as compared with children in Bulgaria attending mainstream schools. The European Committee of Social Rights concluded that the disparity between the two groups was so great that it constituted discrimination against children with disabilities.

3. MDAC & BHC's Recommendations to the Bulgarian Government

In this section of the analysis we provide recommendations on key issues highlighted by European Committee of Social Rights in its decision in *Mental Disability Advocacy Center v. Bulgaria*. The recommendations are designed to guide the Bulgarian government in taking steps to comply with the Committee's decision, and to forge public and institutional discourse on inclusive education for all.

Right to education for all

- 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.**

For more information, see §§37, 43, 44 45, ECSR decision; §40(e), UN Committee on the Rights of the Child, Concluding Observations on Bulgaria's Second Periodic Report CRC/C/BGR/CO/2, 23 June 2008; §§9, 27, UN Special Rapporteur on the Right to Education, "The right to education of persons with disabilities", A/HRC/4/29, 19 February 2007.

- 2. Adopt a timetabled plan to eliminate segregated school practices altogether. 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. Ensure that schools and curricula are adaptable and accessible to all children, including children with special education needs.**

For more information, see §§37, 43, 45, 46, ECSR decision; Article 24, UN Convention on Rights of Persons with Disabilities; §§13, 24, 84(b), (c) UN Special Rapporteur on the Right to Education, "The right to education of persons with disabilities", A/HRC/4/29, 19 February 2007.

- 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.**

For more information, see §44, ECSR decision; §§25, 28, 34, 36, 84(c)-(g), UN Special Rapporteur on the Right to Education, "The right to education of persons with disabilities", A/HRC/4/29, 19 February 2007.

- 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.**

For more information, see §44, UN Special Rapporteur on the Right to Education, "The right to education of persons with disabilities", A/HRC/4/29, 19 February 2007; § 44(c), UN Committee on the Rights of the Child, Concluding Observations on Bulgaria's Second Periodic Report CRC/C/BGR/CO/2, 23 June 2008); and Article 33(3) of the UN Convention on the Rights of Persons with Disabilities.

Data collection

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.

For more information, see §40, 53, ECSR decision; §§66-69, 84(j), UN Special Rapporteur on the Right to Education, “The right to education of persons with disabilities”, A/HRC/4/29, 19 February 2007; §§18-19, 44(e), UN Committee on the Rights of the Child, Concluding Observations on Bulgaria’s Second Periodic Report CRC/C/BGR/CO/2, 23 June 2008) and article 31, UN Convention on the Rights of Persons with Disabilities.

Implementation

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.

For more information, see §§38, 39, 47, ECSR decision, §§44(c), (d), 58(a), (d), UN Committee on the Rights of the Child, Concluding Observations on Bulgaria’s Second Periodic Report CRC/C/BGR/CO/2, 23 June 2008; §§26-27, 84(a), (b), UN Special Rapporteur on the Right to Education, “The right to education of persons with disabilities”, A/HRC/4/29, 19 February 2007.

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”. Ensure that such a plan identifies duty bearers, includes performance indicators (see Recommendation No. 8, below), and is disseminated widely.

For more information, see §30, UN Special Rapporteur on the Right to Education, “The right to education of persons with disabilities”, A/HRC/4/29, 19 February 2007.

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.

For more information, see §§38, 39, ECSR decision; §45, UN Special Rapporteur on the Right to Education, “The right to education of persons with disabilities”, A/HRC/4/29, 19 February 2007.

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.

For more information, see § 47, ECSR decision; §58(a), UN Committee on the Rights of the Child, Concluding Observations on Bulgaria’s Second Periodic Report CRC/C/BGR/CO/2, 23 June 2008; §§32,

38, 83, 84(d), UN Special Rapporteur on the Right to Education, “The right to education of persons with disabilities”, A/HRC/4/29, 19 February 2007.

Monitoring

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.

For more information, see §§33-34, 38, 43, 45, 47, UN Special Rapporteur on the Right to Education, “The right to education of persons with disabilities”, A/HRC/4/29, 19 February 2007; §44(c), (d), UN Committee on the Rights of the Child, Concluding Observations on Bulgaria’s Second Periodic Report CRC/C/BGR/CO/2, 23 June 2008; Article 33(2), UN Convention on the Rights of Persons with Disabilities; Optional Protocol to the UN Convention against Torture.

Prohibition of discrimination

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*.

See §§51, 53, ECSR decision; §25(d), UN Committee on the Rights of the Child, Concluding Observations on Bulgaria’s Second Periodic Report CRC/C/BGR/CO/2, 23 June 2008; §84(a), UN Special Rapporteur on the Right to Education, “The right to education of persons with disabilities”, A/HRC/4/29, 19 February 2007; Article 5, UN Convention on the Rights of Persons with Disabilities.