

NATIONAL LEGAL INNOVATION STRATEGY Bulgaria

INNOVATING EUROPEAN LAWYERS TO ADVANCE THE
RIGHTS OF CHILDREN WITH DISABILITIES



Belgium



Bulgaria



Czech Republic and
Slovakia



Ireland



Lithuania



Poland



Romania



Coordinator



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PLATFORM FOR PROTECTION of the rights of children with intellectual disabilities from ALL FORMS OF VIOLENCE¹

Stakeholders' Position

This Platform is an initiative of a group of Bulgarian lawyers² - human rights defenders of children's rights and non-governmental organisations whose aim is to join forces in creating a good and evolving environment for children with disabilities in which they enjoy their rights. Such an environment can be guaranteed only if there is a synergy among sufficient safeguards, specified in legislation, adequate law enforcement, the existence of attitudes that accept the equality of all children and do not discriminate and, last but not least, – a legal system which can arbitrate quickly and efficiently in cases where rights are violated.

Introduction

During the last decade Bulgaria has made progress in protecting children's rights and has undergone a change in the philosophy of childcare. The reform in the field of children's rights seeks to conform to and effectively implement international standards for better results for children as enshrined in the **UN Convention on the Rights of the Child**³ and the **UN Convention on the Rights of Persons with Disabilities**.⁴

The State policy in the field of children's rights in the Republic of Bulgaria is based on the **National Strategy for Children 2008-2018**⁵ adopted by the National Assembly and developed in accordance with the aims and the principles of the **Convention on the Rights of the Child** and the **Child Protection Act**⁶ regarding the place of the child in society, the right to family life, the provision of conditions for the effective exercise of the rights of children, improvement of children's health and reduction of the risk of poverty. The Council of Ministers adopts annually an updated **National Programme for Child Protection** in implementing the National Strategy and reports on the implementation of the priorities and actions set out therein. The main legislation is the Child Protection Act which provides the framework and the spirit of the system of protection and care for children.

¹ This document is a National Legal Innovation Strategy and was created as a result of strategic stakeholders' meetings on the issue of protecting the rights of children with intellectual disabilities from all forms of violence conducted within the project "Innovating European Lawyers to Advance the Rights of Children with Disabilities („Новаторство за европейските юристи за да бъдат застъпени по-добре правата на децата с увреждания“) coordinated by the Mental Disability Advocacy Centre (MDAC) – Budapest, in partnership with organisations from eight European countries - Belgium, Bulgaria, the Czech Republic, Ireland, Lithuania, Poland, Romania and Slovakia. The project partner for Bulgaria is the Bulgarian Centre for Not-for-profit Law. The project is co-funded by the European Union.

² This group of lawyers was formed during the National training seminar in Bulgaria, held from 1-2 November 2016 in Sofia, and the subsequent strategy meeting, including attorneys from different Bar Associations – Sofia, Plovdiv, Varna and Dobrich – experts on children's rights, persons with disabilities and discrimination of the office of the Ombudsman of Republic of Bulgaria, students in Law at three universities - University of Plovdiv, New Bulgarian University and University of National and World Economy – and lawyers working in civil society organisations with an interest in developing their expertise in children's rights and advocacy.

³ Ratified by decision of the Grand National Assembly of 11 April 1991 – the State Gazette issue 32 of 23 April 1991, effective from 03 July 1991.

⁴ Ratified with a law passed by the 41st National Assembly on 26 January 2012, the State Gazette issue 12 of 10 February 2012 effective from 21 April 2012.

⁵ Adopted on 31 January 2008.

⁶ Promulgated in the State Gazette issue 48 of 13 June 2000.

The implementation of the **Council of Europe Strategy for the Rights of the Child 2016-2021** (Sofia strategy of CoE)⁷ started in the spring of 2016. It aims to provide a comprehensive assessment and response to the recent challenges to the world of the child by setting as a priority five goals of children's rights for the Member States of the Council of Europe - equal opportunities for all children; participation of all children; life free of violence for all children; adaptation of justice to all children; and ensuring children's rights in the digital environment.

On 8 February 2017, the Council of Ministers adopted a National Programme for Protection of Children from Violence and Abuse (2017-2020), which sets the national framework for coordination between State authorities (departments for child protection, police and courts), representatives of civil society and the nongovernmental sector regarding the necessary measures to prevent violence in all its forms. It states that there is a need to create the necessary conditions to ensure that children who are at higher risk of vulnerability - children with disabilities, children in formal care living in specialised institutions, social services, residential, foster care – can report violence, but there are no particular measures provided to ensure this. It also recognises the importance of investigation by qualified specialists who have completed specialised trainings and use an approach based on children's rights and consistent with their needs, but there are also no concrete measures provided to ensure this.

Despite a number of programs and strategic documents related to the rights of the child, the country still lacks a clearly structured policy for support of children with disabilities and does not provide an environment which ensures that all their rights are protected and that they can enjoy them. Even with some positive change, the pace of the system reform remains slow, lacking a firm, consistent and coordinated policy which would provide adequate conditions for the full exercise of rights by children with disabilities and ensure their protection from criminal infringements and violations. The justice system is not fully adapted to the needs of children in this vulnerable group and remains sluggish in terms of developing innovative approaches to work with them. The available measures for prevention of violence also remain insufficient and, in most cases, inoperative.⁸

1. Right to inclusive education⁹

The new Pre-school and School Education Act which entered into force in 2016 is an important success at the legislative level since it is the first law to recognise inclusive education as an integral part of the right to education. However, the country continues to have low levels of awareness of the seriousness of the problem and insufficient support for children with special educational needs at school (or, in general, to even access school). According to the research results published in the "Mark book 2016. What is the average grade of the state in child care?", prepared by the National Network for Children for 2016, there are still no professional and well-trained staff, most of the teachers are not prepared and do not even have the desire to work with these children. Although the number of resource teachers and other specialists has generally increased over the years, they are still scarce which directly affects the quality of their work. It is

⁷ Adopted by the Committee of Ministers of the Council of Europe on 2 March 2016.

⁸ Other relevant acts are the Protection against Discrimination Act, promulgated in the State Gazette issue 86 of 30 September 2003, effective from 01 January 2004, Protection from Domestic Violence Act, promulgated in the State Gazette issue 27 of 29 March 2005, Integration of People with Disabilities Act promulgated in the State Gazette issue 81 of 17 September 2004, effective from 01 January 2005.

⁹ "Mark book 2016. What is the average grade of the state in child care?", National Network for Children, April 2016.

imperative that the Ministry of Education and Science recognise the need for sustainable application of the principles of inclusive education among teachers and work purposefully towards improving not only access to mainstream schools but also the quality of education that children receive by qualifying pedagogical specialists. The existing attitudes among children and their parents and the negative coverage of the integration process and its challenges in the media have a negative impact on the access of children with disabilities to inclusive education.

2. Right to live in the community

The existing attitudes towards diversity in terms of children from vulnerable groups are the main barrier to full inclusion of children with disabilities in public life, condemning them to isolation out of sight of the "normal" society. Parents and carers find it difficult to support empowerment of such children to take their own decisions according to the type and degree of their disability and to provide opportunities for equal choices in every area of their life and development. An important document adopted in 2010 - "Vision for Deinstitutionalization of Children in Bulgaria", National Strategy - helped speed up the process of closing residential homes for children with disabilities, but, despite the set objectives and desired outcomes, the new services ("community based") of residential type which actually replaced the institutions still very much isolate the residents. As a result, these services are unable to create sufficient conditions for a full life in the community.

The lack of flexible and intense support provided within social services according to the needs of the people with disabilities is problematic. Access to quality services for children from more remote and small locations remains very limited and exacerbates the lack of full inclusion in social processes. The institutional culture of the previous institutions has been transferred into the new residential services, meaning, in many cases, that they have effectively established new institutions, accommodating smaller number of residents with better living conditions but essentially continuing to exclude and prevent inclusion in the community for the children accommodated in them.

3. Right to health¹⁰

Access to health care remains a challenge, especially for children who are part of marginalised groups. Another significant problem is that at present Bulgaria does not have an objective, State-driven policy for securing availability across the regions of the country of specialists and services focused on psychiatric and psychological support for children and the prevention of mental health problems. Within the "Social inclusion" project of the Ministry of Labour and Social Policy, 47 Centres for early intervention for people with disabilities in Bulgaria were established. This has provided national scale to the care of children with special needs and support for their families focusing on the prevention of developmental delays and abandonment of children with disabilities in institutions. These Centres for early intervention provide complex services including health, social and educational care and support.

In 2015, new amendments to the Medical Establishments Act provided for the establishment of Centres for complex services for children with disabilities and chronic troubles. These are medical establishments where medical and other specialists shall ensure long-term treatment and rehabilitation for children with disabilities and severe chronic troubles as well as training for their

¹⁰ "Mark book 2016. What is the average grade of the state in child care?", National Network for Children, April 2016.

parents to take care for them in the family environment. They also provide for visits to provide specific care for children with disabilities and severe chronic troubles who have grown up in a family environment or in a social service of residential type. These Centres shall also facilitate connections between the different medical establishments and the general practitioner with the support of the social system providing child care. At the end of 2015, it was still unclear how and where the new vision will work. Despite these developments, lack of sustainability or adequate access to health services for children with intellectual disabilities remains the reality.

4. Right to access to justice¹¹

Despite some focused and systematic efforts by the Ministry of Justice, international and local non-governmental organisations, and individual courts in the country, legislative and administrative rules that will lead to a real change in the situation of children are still not adopted. In 2015, amendments to the Criminal Procedure Code were proposed to ensure the implementation of more friendly procedures adapted to children but they, however, were not adopted. Some of the texts provide substantial modification of the legislation for interviewing children in specially equipped rooms and preclude direct contact of the child with the accused or the accused's counsel.

Meanwhile preparations for the creation of a specialised juvenile court panel are under way. In 2016, five adapted courtrooms and seven rooms were built in nine regional courts for interviewing children involved in civil proceedings which affect their rights and interests, as well as for the examination of children who are witnesses or victims of a crime. The adaptation in eight of the nine regional courts was initiated within the pilot project "Justice - friend of the child" implemented by a non-governmental organisation. Only one regional court initiated the adaptation of its own accord. Under the project, various information materials for children and parents were distributed and the court and the Child Protection departments use them when preparing a child to participate in litigation in cases of divorce of parents, placement of the child outside the family, and domestic violence. A children's version of the official website of Supreme Judicial Council was also developed on which children may learn about judicial authorities and their rights when they participate in legal proceedings. Many courts periodically hold various initiatives for building children's legal awareness and to make them aware of the work of magistrates, for example, organising open classes, simulation processes and "Open doors" days.

A serious limitation on the right to access to justice occurs for children accommodated in a residential service who become victims of violence: even if they are over 14 years old, they have no means to seek protection because the Protection from Domestic Violence Act does not apply to relationships in this type of institution.

5. Freedom from abuse and other forms of violence¹²

Violence against children is still a topical problem for Bulgaria - about 70% of registered cases of violence are in the family.¹³ In 2016, there was a higher commitment by institutions to take

¹¹ "Mark book 2016. What is the average grade of the state in child care", National Network for Children, April 2016.

¹² "Mark book 2016. What is the average grade of the state in child care", National Network for Children, April 2016.

¹³ According to the National Strategy for Children 2008-2018 -

http://sacp.government.bg/media/filer_public/2015/11/26/natsionalna-strategia-za-deteto-2008-2018.pdf

concrete actions despite the shortcomings in the implementation of the Coordination mechanism for coordinating work on cases of where children have been or are at risk of becoming victims of violence. However, efforts are insufficient and the statistics used are unreliable. Although the social support directorates and the child protection departments at local level have strictly stipulated commitments, the police practice of not alerting the protecting authority in cases where children who have been victims of crime persists. Insufficient resources and opportunities for affected children to recover, especially from sexual abuse and exploitation, remains a serious problem. Health and psychotherapeutic support for these children is inadequately provided.¹⁴

*Within the initiative drafting the current strategy, it was decided, after a series of meetings, to develop an **analysis of the right of the child to freedom from abuse and other forms of violence** in the following chapters.*

Methodology

The groups mentioned below, which work on the rights of children with intellectual disabilities and protection from rights violations, were identified in order to plan future strategic actions and to involve key stakeholders as active participants in change concerning freedom from *abuse and other forms of violence*. These stakeholders were identified and conditionally divided into **five groups**:

1. **The group of advocates for the rights of children with disabilities** - lawyers and legal counsellors working in the field of human rights, and human rights organisations conducting litigation and advocating for children's rights. This group also includes the Ombudsman of the Republic of Bulgaria in its role as public mediator at national level that can refer matters to the competent authorities, and the Commission for Protection against Discrimination;
2. **The children themselves and their parents** (or other adults interested in the fate of the child) - directly affected by violations of this right, and non-governmental organisations and professionals working directly and closely with the children;
3. **The system of State authorities responsible for the creation and implementation of acts** related to children's rights - judges, prosecutors, politicians, the Presidency of the Republic of Bulgaria, different ministries, State Agency for Child Protection and "Child Protection" departments and the Social Support Agency, government authorities and representatives of central and local government;
4. **The system of institutions and services in which violence occurs and/or that have direct or indirect contact with abused children and their parents** - schools, providers of social, educational and health services.
5. **The media, social networks and independent monitoring bodies on human rights.**

An analysis was made following the established matrix - "*Power/Interest*"¹⁵ in order to clarify the role of each stakeholder group and the actions they could take:

¹⁴ Stakeholders` feedback.

¹⁵ Mendelow power-interest matrix.

Group 1.

Advocates for the rights of children with disabilities - relatively homogeneous and dynamic structure including subjects with high level of commitment; this group has a key role in the processes of change – it can be activated quickly by external factors or can be self-activated, with a specialised performance profile, professional and emotional attachment to the case; acting independently, can involve other stakeholder groups in the cause.

Group 2.

Children and their families - persons directly or indirectly affected by the violation - a group with a key role, it includes entities with a permanent makeup which prioritise the violated right; are directly affected by violence; have a static character - needs to be activated additionally from outside through adequate information and support in order to take independent action.

Group 5.

Media and monitoring bodies - subject to change, it may act itself by forming public attitudes and provoking the activity of other stakeholder groups.

Group 3.

A system of State authorities responsible for law enforcement - influential entities that can change human lives; they are involved in Group 2, but do not activate the change themselves, remain the most passive - should be the object of advocacy in order to generate a general change.

Group 4.

A system of institutions and services, where violence happens - shape the everyday environment of the child and the conditions under which rights are violated; most involved but passive entities susceptible to external influences, their behaviour changes as a result of the impact of Group 1 and Group 2; work of the group should be monitored and efforts should be made to improve it by raising awareness and counselling the entities in Group 2.

The ideas and proposals in this document are generated and discussed within the framework of an initiative begun in 2016 to create and conduct a dialogue on ensuring more effective protection of the rights of children with intellectual disabilities. Consultations took place in four stages:

Stage 1 - Consultations with stakeholders

The first stage included conducting **preliminary informal meetings** with potential stakeholders from different professional fields to identify the most urgent cases of violations of the rights of children with disabilities in Bulgaria and to define the areas and methods of mutual cooperation.

Stage 2 –Capacity building

In the second stage, a **two-day training seminar** on "Representation of children with disabilities in the judicial process" in Bulgaria¹⁶ was held with the participation of legal experts from different towns in the country - lawyers, experts on children's rights and people with disabilities from the office of the Ombudsman of the Republic of Bulgaria, legal counsellors, non-governmental organisations, academics and law students who have worked, work or have an interest in working with or supporting children with intellectual disabilities to provide better legal protection of their rights. The existing laws, policies and practices which come into play in relation to violations of fundamental rights of children with disabilities were analysed during the training seminar. The participants generated their own ideas for change of the legislation and the environment necessary for eliminating the aforementioned violations and ensuring the full exercise of children's rights. As a result of the seminar, an **informal network of lawyers** was formed which expressed their willingness to work together and to engage through personal actions in the process of changing the environment after the training.

Stage 3 - Involvement of all stakeholders

In the third stage, separate individual or group meetings were carried out with experts from the informal network and other stakeholders to conduct in-depth analysis and draft a strategic document based on specific case studies from practice concerning violations of children's rights.

Stage 4 – Creation of informal network for interaction

The last, fourth stage ended with a joint strategic meeting on 20th of January 2017 with the participation of representatives of the informal network of lawyers and other stakeholders from different spheres. In the final stage, the participants analysed problems in the current legislation and practices for its implementation and interpretation.

Child's right to protection from all forms of violence

1. Contextual analysis

¹⁶ The training seminar was organised by the Bulgarian Centre for Not-for-profit Law (BCNL) and the Mental Disability Advocacy Centre (MDAC), Hungary, on 1 and 2 November 2016 in the city of Sofia.

Children with disabilities are among the most marginalised and vulnerable groups in Bulgaria.¹⁷ The risk of violence towards them is considerably higher¹⁸ for a number of reasons, including social exclusion, profound stigmatisation and the high degree of dependence on support and care. At the same time, there are also some forms of violence against children that are considered socially acceptable, silently tolerated or not perceived as abuse. Furthermore, it is more likely that children with disabilities will be protected inadequately since the general framework for child protection and protection of people with disabilities does not always take into account the specific needs and characteristics of children with disabilities, as stated in the last report of the EU Agency for fundamental rights (FRA).¹⁹ Ending violence against and among vulnerable children requires decisive legislative reform, programs and policies on preventing and combating violence, including special measures to protect children with disabilities, as well as the provision of enough resources so that they are fully included in society and lead a life free of violence.

In 2012, a total of 2,127 children were victims of violence. In 2013, the total number of child victims of violence was 1,973. In 2013, multidisciplinary teams worked on 575 cases of child abuse. In 2014, the numbers increased to 748 cases - 48% of them concerned physical violence.

As of June 2016,²⁰ Bulgaria reported positive results in the efforts to establish a system of child protection through the provisions of the Child Protection Act and the Family Code in particular. Since 2009, a national helpline for children has been maintained which enables children and adults to provide information about children at risk. The coordination mechanism, set up to coordinate the work on cases of children who are or at risk of becoming victims of violence and for coordination in crisis intervention, works in different places with varied success.

Notwithstanding this progress, cases of inhuman or degrading treatment, including physical, psychological and sexual abuse between and towards children living in residential institutions, continue to be reported. There is no common understanding among professionals about the nature of violence against children with intellectual disabilities; the ability to detect cases of abuse or trafficking is limited because of insufficient cooperation and exchange of information between the competent institutions and inadequate follow-up actions. A serious problem is the lack of sustainable investment and continued support to ensure a "mainstream school" approach to tackle the problem of school bullying. Matters of concern include the insufficient number of crisis centres for protection of victims of violence; difficulties in accessing counselling and psychological support for children who have suffered abuse; and persisting public opinion that domestic violence is a private and not a public problem.

2. Strategic goals and new horizons

There has been a peculiar phenomenon of over-regulation of legal relations, day-by-day changes to laws and adoption of numerous strategic documents in Bulgaria for decades.

¹⁷ <http://sacp.government.bg/bg/prescentar/novini/zapochva-podgotovka-na-5-godishna-nacionalna-progr/>. See also, http://sacp.government.bg/media/filer_public/2015/11/27/otchet-izpalnenie-na-natsionalna-plan-za-preventsia-na-nasilieto-nad-detsa-2012-2014.pdf.

¹⁸ Stakeholders' feedback.

¹⁹ http://fra.europa.eu/en/publication/2015/children-disabilities-violence?_cldee=c3ZldGxhLmJhZXZhQGdtYWlsLmNvbQ%3d%3d&urlid=0.

²⁰ Concluding Observations concerning the consolidated third, fourth and fifth periodic report of Bulgaria, adopted by the Committee on the Rights of the Child at its seventy-second session (May 17th - June 3rd, 2016).

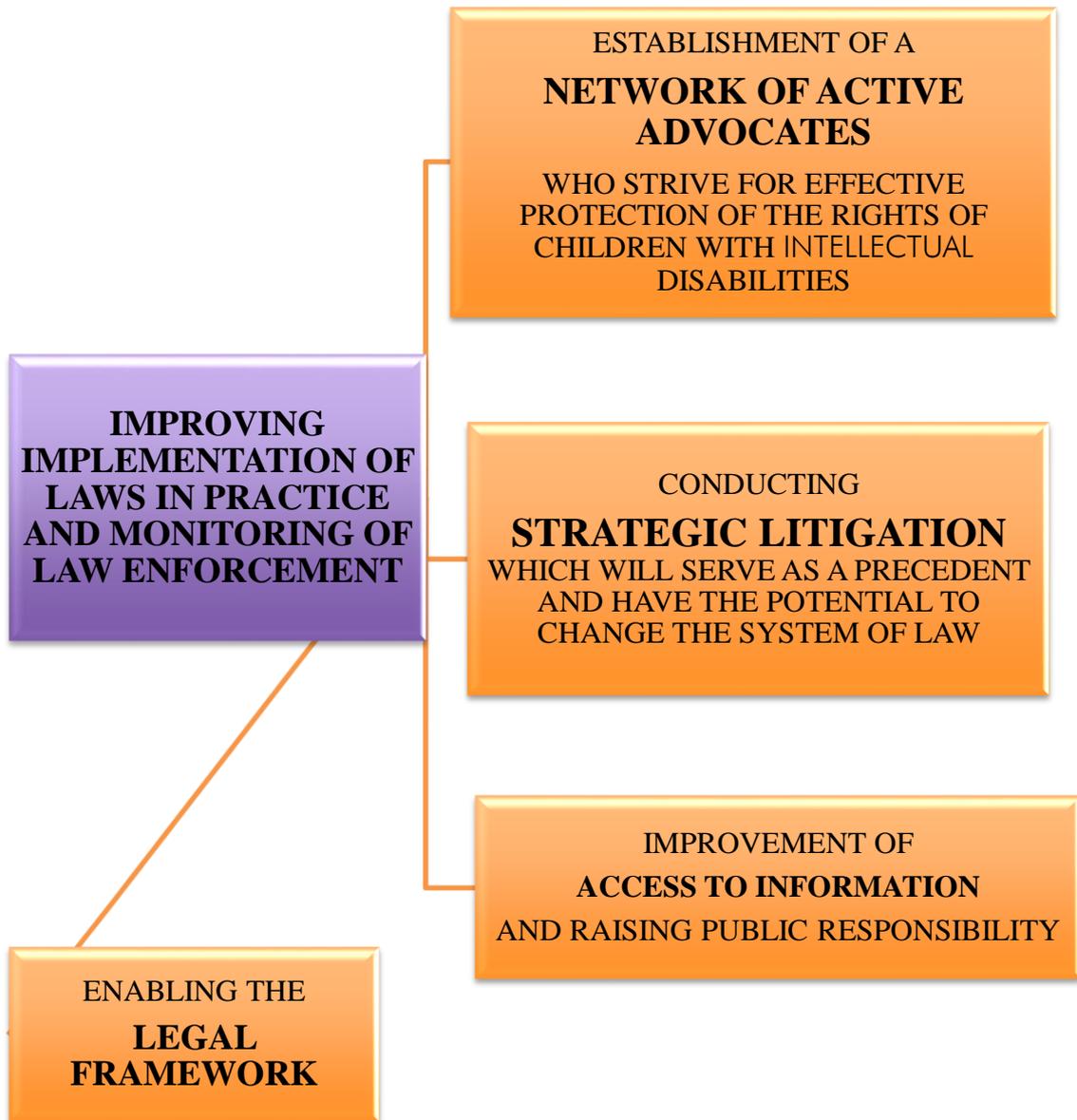
However, the system of protection often remains helpless in the face of cases of domestic violence, abuse in residential services or international trafficking of children. Part of the problem is misinterpretation of laws and their misapplication in practice. The lack of sufficient resources - human, material, specialised training - in the departments for child protection often prevents those departments from recognising signs of abuse and offering the necessary support. The child, within the meaning of the law itself, cannot represent themselves in court or appoint their own legal representative until they are 14 years old. If the child is in a residential service, even if they are over 14 years old, they have absolutely no means to seek protection because the Protection from Domestic Violence Act does not provide protection for relationships in this type of institution.

The vision for a complete change of the system supports the achievement of a major leading goal - *Improving the practice of application and interpretation of current laws* through their full understanding in order to ensure effective protection of the rights of children with disabilities coupled with *monitoring of law enforcement*.

To achieve this main goal, this platform envisages a parallel implementation of three specific objectives:

- 1) *Establishment and operation of a network of active advocates* - lawyers and other stakeholders, who strive for effective protection of the rights of children with disabilities and for fair trial;
- 2) *Improvement of access to information* for stakeholders on the ways to protect the rights and interests of children with disabilities and *raising public awareness, responsibility and activity* in all cases of children's rights violations; and
- 3) *Conducting strategic litigation* which will serve as a precedent and have the potential to change the system of law enforcement.

The results of the implemented specific objectives will indicate clearly the problem areas in law enforcement and will support the creation of a network of advocates advocating for necessary legislative change to **improve and perfect the legal framework**.



3. Domestic and international legal remedies

The protection of children with disabilities from all forms of physical or psychological violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse is guaranteed by national and international legal mechanisms and remedies.

Domestic Remedies

In the Bulgarian context domestic remedies for protection of children's rights include:

- Claims under the Protection from Domestic Violence Act;
- Measures under the Child Protection Act; and
- Claims and reports under the Protection against Discrimination Act.

❖ *Protection from Domestic Violence Act*

The Protection from Domestic Violence Act protects against domestic violence committed by a spouse, by a person with whom the victim is or was in actual cohabitation, by whom they have a child, by a descendant, ascendant, guardian or foster parent, by a person with whom they are in a family relationship in the lateral line or by marriage, and by a person with whom the parent is or was in an actual cohabitation. Any domestic violence committed in the presence of a child is considered as psychological and emotional abuse of the child.

The injured party may file an **application for protection** before the respective regional court with jurisdiction over the permanent or current address of the victim. The application should be filed within one month of the commission of an act of violence. This is an absolute time limit because of the presumption that the victim of violence has knowledge of the violation on the date when the violence happened. If the application contains evidence of direct, immediate or imminent hazard to the life or health of the victim, the district court issues an order for immediate protection in a closed session without summoning the parties. After hearing the case, the court issues a renunciation or a protection order accordingly with which one or more remedies are provided. The judgment is subject to appeal and filing a complaint does not suspend the order of protection. The legal procedure has two instances before the judgment of the district court is final.

- *How efficient and affordable is the domestic remedy for children with disabilities for various forms of domestic violence?*

In the case of children who are victims of domestic violence, the children themselves have the right to refer to the competent court if they have reached 14 years of age. For the protection of small children who are victims of domestic violence, the application may be filed by a parent, a guardian, a brother, a sister or a person who is in direct line of descent with the injured child. There is no legal mechanism for the child to apply directly to the court or request the appointment of a special representative to communicate with them, to examine the situation and to reflect their position on the matter. As a rule, the Child Protection department prepares a report which aims to take into account the opinion of the injured child, thus the view of the child is presented by an intermediary in court proceedings. If the child is over the age of 10, they can be heard in person by the court and it is compulsory unless such hearing is considered contrary to child's best interest as determined at the discretion of the court. There is a legal possibility for the child to be heard in person by the court at a younger age if there is a motion to that effect but normally court practice adheres to the age limit of 10 years. Examples where judges hear children under the age of 10 can be cited as an exception to the rule.

Another legislative omission is the lack of a mechanism for protection against violence committed by a person or persons caring for children with disabilities. These are cases where the child is placed in a residential service but no one in the service is a guardian or custodian, since the parent or parents still hold their parental rights. The provisions of Art. 3 para. 8 of the Protection from Domestic Violence Act limit the circle of persons against whom protection can be sought to a guardian, a trustee or a foster parent (outside the cases of blood or conjugal relationship - factual or formalised). Thus, the child in a residential service has no mechanism for protection from violence comparable to domestic violence and it is not recognised by law as a criminal offense.

- *Where is the problem?*

The lack of legal avenues for children under 14 years to complain to the competent authority about domestic violence and the impossibility of engaging a legal representative puts them in a subordinate position of power and dependence on parents, guardians and other persons entrusted with their care, who are often the people inflicting violence. Children who are victims of domestic violence are represented in court by their parents or guardians. Regardless of the procedural possibility for children to appoint a special representative in the proceedings, the court practice is controversial and the number of judges who use this possibility is not many.

Reasonable accommodations are not provided for in the procedure for considering applications for protection from domestic violence. The procedure is not adapted as to take into account and respect the opinions and preferences of children with intellectual disabilities.

Thus, the available remedy provides the possibility of protection but it largely puts children with intellectual disabilities completely in the power of their parents, guardians or the persons to whom they are entrusted, and does not create the prerequisites necessary to ensure effective participation and access to justice for the children with intellectual difficulties themselves.

❖ *Child Protection Act*

The Child Protection Act provides **measures for protection** of children, including special protection for children at risk. The measures are applicable to all children, including children with intellectual disabilities and mental health problems. A person who becomes aware that a child needs protection should immediately inform the social support directorate, the State Agency for Child Protection and the Ministry of Interior. Any person to whom this becomes known in connection to the exercise of their profession or occupation, even if it is subject to professional confidentiality, has the same obligation.

The enactment of protection measures concerning placement in an environment outside the family is done temporarily through an administrative procedure based on an order of the director of the social support directorate at the current address of the child. The application to place the child outside the family environment is then considered by the district court with jurisdiction over the current address of the child. If the child is over the age of 10 they are heard in various administrative and judicial proceedings, unless this would harm their interests. Before the age of 10, the child may be heard depending on the degree of their development. The decision on hearing the child should be reasoned. Before hearing the child, the court or the administrative body must provide them with the necessary information to help them form their opinions and to inform them about the possible consequences of their wishes or their supported opinion, and about any decision of the judicial or administrative authority. There are no provisions regarding reasonable accommodations and use of alternative forms of communication that would allow a child with intellectual disabilities to obtain the necessary information in an easy to read and accessible format or to express their opinions and preferences. As regards children with disabilities, in practice this leads to ignoring the child's right to be heard, as a rule, on the grounds that *"the hearing will not be in the best interests of the child."*

- *Where is the problem?*

Usually it is not clear how the competent authority determines the wishes of the child and their preferences, if there is any discussion to that effect. This ambiguity arises from the fact that the departments for child protection lack sufficient variety of means and materials for communicating with children with disabilities (reasonable accommodations) with which to deal with each individual case. The general lack of professional requirements for appointing personnel to the child protection departments, the lack of personal or professional requirements for appointees, the lack of training to upgrade their expertise, and the lack of supervision – understood as support and not as administrative control – create a risk of violating the rights of children from vulnerable groups.

Another technical problem is the lack of official statistics. There can be no good policy for child protection without knowing how many children there are in the different vulnerable groups, including children with disabilities, what their needs are, what specific services can meet these needs and without analysing the data and the links between this information.

Practice shows that, as a rule, children under the age of 10 are rarely heard in these procedures. Minor children have very limited opportunities to participate in the process apart from the hearing pursuant to Art. 15 of the Child Protection Act. They cannot complain to the competent authorities and cannot choose a legal representative to defend their rights and best interests. In such cases, the departments for child protection are the intermediary which considers and expresses the opinion of the child. However, due to the lack of skilled social workers to communicate with children with disabilities, their reports usually reflect the opinion of the parents or guardians (or one of these, in the event of conflict). Usually, the point of view of the child is not presented in these reports and it is unclear whether efforts have been made to identify it. If there was a conversation with the child, it is never clear what approach was used and whether the social worker had the necessary skills and personal qualities to ensure that the meeting with the child was conducted in compliance with the conditions necessary to achieve trust through meeting appropriate ethical standards and using communication techniques appropriate for the age and level of development of the child.

The remedies under the Child Protection Act are not available to children themselves and their participation is limited to a hearing under Art. 15 of the Act. Normally, greater weight is given to the report of the competent department for child protection which represents the opinion and view of the child by proxy.

❖ *Protection against Discrimination Act*

According to the Protection against Discrimination Act persons with disabilities, including children with intellectual disabilities, can seek protection against various forms of abuse and less favourable treatment based on various grounds including disability. The law provides for two types of **proceedings for protection from discrimination**: 1) proceedings before a special jurisdiction – the Commission for Protection against Discrimination (CPD) and 2) court proceedings.

The provisions of the Civil Procedural Code (CPC) are applicable to court proceedings for protection against discrimination. This means that all specifics regarding participation, access and representation of children, including children with intellectual disabilities, mentioned in the previously outlined domestic remedies apply for remedies under the Protection against Discrimination Act.

Proceedings before the CPD as a special jurisdiction are instigated after a complaint by the victim at the initiative of the Commission or following reports of natural persons, legal entities, or State and municipal authorities. Children with intellectual disabilities can benefit from protection under this procedure if the complaint is filed by their parents or guardians/custodians or if relevant information regarding different forms of abuse is available which justifies the Commission to act on its own initiative or on the report of third persons – legal entities, or municipal or State authorities.

- *Where is the problem?*

There are no specific provisions regarding the participation of children in proceedings before the Commission. However, in view of the provisions of Art. 15 of the Child Protection Act which requires that children over the age of 10 are heard in any administrative or judicial proceedings, the conclusions regarding the domestic remedies mentioned above relating to the right of children to be heard apply to proceedings before the Commission for Protection against Discrimination as well.

Although the Commission can act on its own initiative by law and even file a separate complaint in support of the rights of a vulnerable person or group of people, this actually does not happen in practice. So, the only way to protect the rights of children from vulnerable groups is to utilise the possibility provided to everyone under the law allowing them to report cases of discrimination to the Commission. The Commission may issue a decision and:

1. establish a violation;
2. identify the offender and the affected person;
3. determine the type and amount of the sanction;
4. apply coercive administrative measures; and/or
5. establish that there was no violation of the law and dismiss the complaint.

The Commission is empowered to issue compulsory instructions to employers and officials to cease violations of the legislation preventing discrimination. Also, the Commission is entitled to stop the execution of illegal decisions or orders by authorities and employers that lead or may lead to discrimination, and to impose fines. Apart from the procedure before the Commission, there is a regular court procedure. The regional court is the competent court. As part of this procedure, the court is empowered to order monetary compensation.

International Remedies

- ❖ *European Court of Human Rights*

This Court is part of the Council of Europe and monitors compliance with the European Convention on Human Rights. It considers **complaints against Member States of the Council of Europe** filed by individuals or other countries. As a remedy, it can be used after exhausting the domestic remedies, within 6 months from the issuance of the last judgment or act of a competent authority. It is important to evaluate the effectiveness of the available domestic remedies to assess whether this deadline is met.

❖ *Court of Justice of the European Union*

This Court interprets the Charter of Fundamental Rights of the European Union in the execution of EU law: the relevant EU law provision must be interpreted in accordance with the Charter. There are two opportunities to bring a case to the Court: 1) referral by a national court for a ruling on preliminary issues, regulated in Art. 628 of the CPC and 2) an infringement procedure which is initiated against a Member State.

In connection with the protection of children with intellectual disabilities from different forms of violence, harassment and abuse, an application to the UN bodies is an effective international legal mechanism. These UN bodies are created on the basis of individual conventions in order to monitor States' compliance with their provisions. In this context, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities are relevant. Special Rapporteurs, and expert groups responsible for ensuring respect for the rights may also be appealed to.

The mechanisms for dealing with issues related to the application of various international agreements include: **individual complaints, complaints by one Member State against another Member State, and inquiries.** The respective country must have ratified the protocol regulating the mechanism for filing

complaints as a prerequisite for filing an individual complaint. Complaints are directed only against national governments. For example, until the Republic of Bulgaria ratifies the Optional Protocol to the Convention on the Rights of Persons with Disabilities, Bulgarian citizens will not have the right to submit individual complaints to the Committee to protect the rights enshrined in the Convention. Individual complaints can be filed only in connection with violations of the relevant international treaty.

It can be concluded that domestic remedies are not directly accessible to children. Various proceedings are entirely within the authority of parents, guardians or other persons to whom children are entrusted due to the absence of legal opportunities for the children themselves to complain to the competent authorities and to appoint legal representatives. In the Civil Procedural Code and Child Protection Act, there are no adequate guarantees for the personal involvement of children, especially children with intellectual disabilities, in judicial proceedings. Often children are treated as objects for which adults are empowered to make decisions and express children's views, opinion and preferences.

❖ *European Committee of Social Rights*

It is possible to file **collective complaints** before this body. Problems affecting a group of persons can be addressed and are subject to regulation according to the European Social Charter (revised). Not every organisation or group of individuals can file such a complaint but only

organisations which have special status. If they do not have this, they can refer to the Committee only through the State but this is very rare. A possible way to use this mechanism is through collaboration between a group of people or organisation(s) that want to achieve change and an organisation entitled to file complaints to the Committee of Social Rights. An example of such cooperation is the case of *MDAC v. Bulgaria*, which brought the matter of access to education for children with mental disabilities in institutions before the Committee. The Committee acknowledged that there was a violation of the Charter and that lack of access to effective education is discrimination. The decision of the Committee, together with the efforts of interested national organisations and individuals, has led to a change in education at national level.

❖ *UN Committee on the Elimination of All Forms of Discrimination against Women*

Bulgaria is party to the Convention on the Elimination of All Forms of Discrimination against Women and it has ratified the Optional Protocol to the Convention. This means that the Committee can receive **individual complaints**. There are now positive judgments against Bulgaria in cases concerning domestic violence. In some cases, this mechanism may be more appropriate than an individual complaint to the European Court of Human Rights because of the lack of strict criteria for timeliness of the complaint and the special attention to the specific angles of the case related to gender-based violence - domestic violence, sexual violence, etc.

Most vulnerable groups of children

Analysis and comparison of identified risks of conducting strategic litigation and the potential benefits and results lead to the conclusion that there is a relatively low risk of adverse consequences and a relatively large, socially significant potential benefit which justifies the initiation of strategic litigation.

Causing additional trauma to a child who has suffered abuse or other form of mistreatment remains the most serious risk. To prevent this, a psychologist should be assigned at the planning stage of strategic litigation - a specialist in communication with children with intellectual disabilities who will provide the necessary psychological support to the injured child and will facilitate communication between the child and the lawyer, if needed.

The results will help improve the work of social services and offices in practice as well as that of investigative bodies so as to increase adequate protection of the rights and interests of children with disabilities. Also, the results of the litigation could lead to actual "adjustments" to the existing imperfect regulations, legislation and guarantees of adequate protection. The most valuable result, however, remains the possibility of a positive social impact on the community – alerting people to the problem of violence which happens in institutions concealed behind the facade of the residential form of care through widespread media coverage, provoking public intolerance for violence and civic commitment to combat all forms of violence.

Plan of strategic litigation

1. **Identify the client - the child victim of violence in whose name and to whose benefit strategic litigation will be conducted**

The selection can be done through information provided or published by the network of advocates, human rights organisations working in the field of children's rights or the rights of people with disabilities, providers of social services for children or organisations for legal aid; through media coverage of a specific case of abuse in a residential service; through personal impressions gained during visits to residential services; or through the results of monitoring reports by supervisory bodies.

2. Roadmap for conducting strategic litigation

2.1. Building a team of lawyers and specialists (psychologists, social workers) for the case whose make-up will depend on the geographic territory in which the violence occurred and can vary for each concrete case;

2.2. The team **determines the leading lawyer** from the network of advocates to take the concrete case, taking into account the following circumstances: 1) geographical location (living close to the child's residence); 2) availability; 3) specific area of expertise; and 4) connection to a civil society organisation that has resources to support the team;

2.3. Preparing a plan to support the client taking into consideration the following circumstances: 1) age and developmental level of the child; 2) whether the child is supported by his/her parents or other relatives; 3) whether the child lives in the community or in an institution; 4) whether the child goes to a mainstream or special school; and 5) whether the client have specific accessibility needs. Depending on the goal of each specific case, the action plan shall include the opportunity to seek an appropriate alternative living arrangement in cases where the child has been removed from the institution;

2.4. Collecting key evidence (documentary evidence, physical evidence, medical expertise etc.) for the case, enlisting witnesses;

2.5. Reaching agreement on the text of the draft claim with the whole team and coordinating action on the case with the team members;

2.6. Initiation of proceedings before the competent court in the form of a claim brought on behalf of a child with mental or intellectual disability placed in a residential service in order to establish the fact of violation of his/her right to protection from all forms of violence.

When taking into account the obstacles to such a claim, it should include considering where to address the claim. There are two alternatives:

- I. In the event of an individual claimant: this is possible in cases where the child is not placed in an institution or, if they are placed in an institution, where they have well-maintained contacts with their parents or with at least one of them. In this case, it is possible to file an application concerning an identified violation of their rights before a court or a complaint before the Commission for Protection against Discrimination.
- II. In the event it is not possible for an individual child to file an individual application or claim (through a parent or a guardian) or if the risk to the child is disproportionately high compared with the potential benefits, a second approach is possible, namely filing a report to the Commission for Protection against Discrimination for systematic violations of the rights of a particular group of children. This method allows the complainant to request identification of specific structural defects in the system of child protection, such as discrimination, and to create pressure to change standards, practices and policies. For example, a report of this kind could challenge the abovementioned deficiencies in the

system of child protection and the system of education that actually result in that children with disabilities continuing to live in conditions of violence and isolation.

3. Key Partners

For the successful conduct of the litigation, the following will be involved as partners:

- Lawyers and legal counsellors from the informal network who have expressed their willingness and readiness to work together and to be engaged through personal actions in the processes of change – conducting cases, providing research, supporting litigation, etc.;
- Psychologists and experts in communication with children with intellectual disabilities who may support clients and their families before and during litigation;
- Human rights organisations, non-governmental organisations and professionals working in the field of the children and persons with disabilities who publicise cases of abuse and refer the matter to the competent authorities;
- The Presidency of the Republic of Bulgaria - a representative body which can express publicly its support for protecting the rights of children with disabilities;
- The Ombudsman of the Republic of Bulgaria in its role as a public intermediary at national level which can refer a concrete violation or series of violations to the competent public authorities; and
- Key journalists with professional interest in the field of children's rights who may cover the cases of violence against children with intellectual disabilities through documentaries, reportages, articles, publications etc. in national or regional media.

4. Risk management plan

- **Risks associated with the client:**
 - Re-traumatisation due to complications in the litigation, its long duration, stressful atmosphere in the courtroom;
 - Need for additional psychological support for the client;
 - Litigation fatigue and a decision to withdraw from the litigation;
 - Refusal of further assistance;
 - Best interest of the child requires suspension of litigation;
 - Worsening health of the client prevents them from active involvement in the litigation;
 - Concerns about victimisation and subsequent repudiation of cooperation by the client;
 - Decision of parents withdrawing from the proceedings, despite the will of the child; and
 - Death of the client.
- **Procedural risks:**
 - Setting bad precedent.
- **Strategic risks:**
 - Lack of resources – human, time, material resources;
 - Withdrawal of the legal representative from the proceedings, due to objective or subjective reasons;

- Political crisis/adoption of unfavourable legislative changes during the litigation, immediately after the litigation respectively; and
- Noncompliance with a judgment (narrow interpretation of a judgment, limited strategic impact).

Follow-up Activities

After assigning roles, each member of the network can be actively involved in one or more of the following advocacy activities:

- Conducting a public campaign to raise support for the cause;
- Carrying out an extensive information campaign, media events, development of advocacy materials;
- Maintaining a page on Facebook dedicated to the campaign;
- Sharing individual experience in strategic litigation with fellow lawyers outside the network;
- Researching the need for capacity-building of staff in social service agencies and social service providers to recognise and prevent violence in residential services;
- Providing training, consulting and expert support to staff in the departments for child protection;
- Participation in work groups for drafting legislative and regulatory texts;
- Providing legal assistance, initiation and conduct of subsequent strategic litigation;
- Preparing legal research studies and analyses on the issue of violence against children with disabilities, accumulating good practice in domestic and international judgments; and
- Participating in projects and programs, conferences, workshops and other forums on the subject organised by State institutions and non-governmental organisations.

RESOURCES

1. Human Resources

Local lawyer

- o Identifying or searching for clients with intellectual disabilities in cooperation with local civil society organisations or other lawyers;
- o Cooperating on advocacy activities; and
- o Conducting domestic litigation.

Local civil society organisation for persons with intellectual disabilities and local civil society organisations of children with intellectual disabilities

- o Reporting of cases of child abuse;
- o Providing professional and psychological support for clients with intellectual disabilities and their families;
- o Providing information on different types of service;
- o Cooperating with local lawyers;
- o Organising educational and capacity building trainings; and
- o Organising public awareness campaigns, advocacy activities, and media appearances.

International non-governmental organisation

- Supporting advocacy and communications activities;
- Supporting litigation at domestic level;
- Supporting litigation at international level; and
- Cooperating to disseminate the outcomes of the research, litigation and advocacy efforts.

2. Financial Resources

Court fees

- The cases can be litigated by pro bono lawyers.

Expenditures linked with the litigation preparation and proceedings

- Pro-bono lawyers can be involved either in research or in the litigation, as well as volunteers and law-faculty students;
- Funds can be raised by public campaign, as well as targeted fundraising, e.g. targeting citizens and concrete entrepreneurs, companies, charities.