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B U L G A R I A N  
H E L S I N K I   
C O M M I T T E E



Written Comments to the Human Rights Committee on the List of Issues

Bulgaria Review, 13-14 July 2011

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Submitted by the  
Mental Disability Advocacy Center (MDAC)  
and  
the Bulgarian Helsinki Committee (BHC)

3 June 2011

## Introduction

1. The Mental Disability Advocacy Center and the Bulgarian Helsinki Committee make this written submission in response to the List of Issues published by the Human Rights Committee on 3 December 2010 in regard to Bulgaria's compliance with the provisions of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"), with a particular focus on the enjoyment of those rights by persons with disabilities. The purpose of the submission is to provide the Committee with additional information on the factual and legal situation in Bulgaria with respect to the published List of Issues and its consideration of Bulgaria's response to the List of Issues (hereinafter "the Government's response").
2. The Mental Disability Advocacy Center (MDAC) is an international human rights organization which advances the human rights of children and adults with intellectual and psycho-social disabilities. MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research. MDAC has participatory status with the Council of Europe and special consultative status with the United Nations Economic and Social Council.
3. The Bulgarian Helsinki Committee (BHC) is an independent non-governmental organisation for the protection of human rights. The objectives of the committee 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.
4. MDAC and BHC have worked as partners since 2005 to advocate for and litigate the rights of persons with intellectual disabilities and persons with psycho-social (mental health) disabilities. MDAC and BHC advocate at the domestic, regional and international levels. Together, MDAC and BHC have litigated cases in Bulgarian domestic courts, before the European Court of Human Rights, and under the collective complaint mechanism of the European Social Charter. The issues on which MDAC and BHC's joint advocacy and litigation have focused include guardianship/deprivation of legal capacity; deprivation of liberty in psychiatric hospitals and social care institutions; torture and ill-treatment in social care institutions and psychiatric hospitals; and the right to education for children with intellectual disabilities. Since 2000, BHC has monitored institutions for children and adults with disabilities in Bulgaria. In 2010, in conjunction with the public prosecutor, BHC conducted extensive monitoring of children's institutions in Bulgaria and issued a series of reports showing massive neglect, ill-treatment and abuse in children's institutions, the results of which will be discussed in this submission. BHC and MDAC are currently monitoring the prosecution of the cases of death and abuse in children's

institutions and appealing cases in which the prosecutor has refused to prosecute the perpetrators based on claims of insufficient evidence. MDAC's and BHC's joint work on the rights of persons with mental disabilities in Bulgaria has given the two organizations significant expertise and access to factual information and data that are highly relevant to questions posed by the Committee in its List of Issues for the review of Bulgaria at its 102<sup>nd</sup> session in July 2011. MDAD and BHC hope that this submission will aid the Committee in its review of Bulgaria.

#### A. Additional information related to paragraph 4 of the List of Issues

5. In paragraph 4 of the List of Issues the Committee asked the Government to describe the "legislative and administrative measures and any recent court decisions on the protection against discrimination on any ground". Principles of non-discrimination and equality are essential to the exercise and enjoyment of rights by persons with disabilities. The prohibition of discrimination is an immediate and cross-cutting obligation enshrined in the Covenant and must not only be applied in connection with all substantive rights guaranteed by the Covenant (Article 2(1)), but it is itself an autonomous right (in view of Article 26 of the Covenant as defined by the Committee in General Comment no. 18).
6. The Committee in its General Comment no. 18 on Non-discrimination defined discrimination as *any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*. Furthermore, the Committee on Economic, Social and Cultural Rights recommended, in its General Comment no. 20, that the denial of reasonable accommodation be included in national legislation as a prohibited form of discrimination on the ground of disability.
7. This obligation is further incorporated in Articles 2 and 5 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), according to which denial of **reasonable accommodation** amounts to discrimination on the basis of disability. Reasonable accommodation is defined as a *necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms*. It applies to all areas of law, including and beyond employment law. Bulgaria signed the CRPD in 2007 and the government is committed to ratifying it. The government expressly stated, in paragraph 98 of its written replies, that it is "willing to accede to [the CRPD and its Optional Protocol] when all the necessary requirements are fulfilled". Even though the Bulgarian government still has not ratified this Convention, it is obliged (on the basis of its signature) to refrain from acts that would defeat the

object and purpose of that treaty. Furthermore the European Union acceded to the CRPD in 2010. As an EU member State, Bulgaria has obligations to respect the CRPD provisions arising from the EU law.

8. The applicable Bulgarian legislation does not recognize the principle of reasonable accommodation. Since this principle is embedded in today's internationally accepted understanding of discrimination, legislation must be amended so that it recognises the principle of reasonable accommodation and defines the failure to provide it as a prohibited discrimination. Reasonable accommodation is not an economic or social principle, but a removal of barriers to the enjoyment of all human rights and fundamental freedoms. Thus, failure to provide a reasonable accommodation, or to define such a failure as discrimination, may result in the infringement of a number of rights of people with disabilities guaranteed by the Covenant (including, *inter alia*, the right to vote, the right to equality before the courts, the right to marriage and family life, and the right to liberty of movement and freedom to choose one's residence).
9. The Government's response to the Committee's request to provide relevant information on existing measures to protect against discrimination on any ground was limited to the issues of racial discrimination and the general work of the Commission for Protection against Discrimination (CPAD). In its response to the issues raised in paragraph 4 the government did not submit any relevant information with regard to persons with disabilities. Similarly, it did not mention any legislative or administrative measures or court decisions concerning discrimination on the ground of disability.
10. MDAC observes that the statistical data provided by the government in its response to the issues raised by the Committee are incomplete. Even though the government was asked to describe any recent court decisions on the protection against discrimination on any ground, the government did not fully comply with that request. The information and the table 5 provided are limited only to general information about the number of complaints lodged with the CPAD and the number of closed cases. The government failed to provide any information about the subject matter of those cases, grounds of discrimination raised, nature of the alleged discrimination, content of the decisions or reasons for the dismissal of individual complaints. The government is also silent about the (average) length of the proceedings before the CPAD. Similarly, there is no information available about the manner and effectiveness of enforcement of individual CPAD decisions. MDAC wishes to point out that it is essential to collect and keep such relevant data, as without these data it is impossible for either the Bulgarian government or the Committee to examine the effectiveness of the existing anti-discrimination measures. Additionally, MDAC notes that the obligation to collect appropriate information, including statistical and research data, is enshrined in Article 31 of the CRPD and that such data are necessary to implementation of that treaty.
11. Bulgarian legislation and policy do not ensure the right of persons with intellectual and psycho-social disabilities to **live in the community**, which results in a breach of a

number of their civil and political rights guaranteed by the Covenant. Further, segregation of persons with disabilities leads to their broader marginalisation and, ultimately, advances discrimination against them. Some of these issues have been brought before the European Court of Human Rights. For example, in the case of *Stanev v. Bulgaria*<sup>1</sup>, which is currently pending before the Grand Chamber, the applicant complains that his placement in a social care institution was unlawful and was directly connected, or resulted in, the breach of his other rights, such as the right not be subjected to torture, inhuman or degrading treatment, the right to a fair trial, or the right to respect for his private life and home.

12. Placement in social care institutions is governed mainly by the Social Assistance Act and several sub-law normative acts. Under Article 36 (4) of the Regulation for the Implementation of the Social Assistance Act, social services in specialised institutions should be the last alternative after all possibilities for services provided in the community are exhausted. However, there is no procedure for persons placed in institutions to enforce this provision or to even be informed about the application of this provision their case. Ordinance No. 4 of 16 March 1999 provides that municipalities can offer social services outside the usual home environment in, *inter alia*, homes for adults or children with mental deficiencies (Article 29). The term “mental deficiencies” is, however, not sufficiently defined. Article 27 of the Ordinance states that “persons with mental disabilities are placed in institutions for social care services when they cannot receive proper care at home.” It follows, that if relatives are unwilling or unable to have a person with “mental disabilities” live with them, the only form of social support that the State provides is institutional care. Additionally, this provision is often ignored and there exist no legal remedies (judicial or administrative) to challenge the failure to apply it by the Social Assistance Agency. There exist no guarantees that wishes of persons placed under guardianship would be taken into considerations when deciding on their placement into institutions. Moreover, persons under guardianship have no mechanisms available to challenge such placements.
13. The Committee addressed these issues with regard to Russia and, in respect of Articles 9 and 10 of the Covenant, expressed concerns about “the apparent lack of procedural and substantive safeguards against disproportionate restrictions in the enjoyment of rights guaranteed under the Covenant.”<sup>2</sup> The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT)

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<sup>1</sup> *Stanev v. Bulgaria* (dec.), no. 36760/06, 29 June 2010, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=stanev&sessionId=71626135&skin=hudoc-en>

<sup>2</sup> Concluding observations of the Human Rights Committee with regard to the Russian Federation, CCPR/C/RUS/CO/6, 29 October 2009, paragraph 19

has also repeatedly recommended to the government to introduce judicial review of the lawfulness of placement in social care institutions.<sup>3</sup>

14. **MDAC and BHC suggest that bringing anti-discrimination laws, policies, and practices up to the floor of internationally-accepted norms constitutes a necessary requirement and ask the Committee to encourage the government to prioritise this issue. To bring its anti-discrimination law into compliance with international law, Bulgaria must amend the legislation in a way that it recognises the principle of reasonable accommodation and defines the failure to provide it as a prohibited discrimination.**
15. We urge the Committee to remind the government of the importance of collecting relevant data and statistical information regarding discrimination against persons with disabilities and the obligation to submit these data to the Committee. Without this information it is impossible to successfully combat ongoing discrimination against persons with disabilities.
16. The government must ensure that the persons with disabilities are not deprived of their Covenant rights and that they are provided with procedural and substantive safeguards against disproportionate restrictions in their enjoyment of those rights.

## **B. Additional information related to paragraph 6 of the List of Issues**

17. The Committee requested information on measures taken to address the **discrimination faced by institutionalised persons with mental illness and other disabilities** and measures to ensure that their treatment is not arbitrary and that they are not stripped of their legal capacity and enjoy the full protection of the law. In addition, the Committee requested information regarding access to justice of the persons concerned.
18. We call the Committee's attention to the government's failure to provide any information in response to the Committee's request for information about measures to ensure that persons with mental illness are not stripped of their legal capacity.
19. Contrary to non-discrimination provisions contained in Articles 2 and 26 of the Covenant, persons with mental illness are subject to ongoing systemic discrimination and social exclusion in Bulgaria. Despite numerous plans and policies, Bulgaria has not taken any concrete steps to end such discrimination or to address stigma against persons with mental disabilities. In fact, the legal and administrative systems discriminate against such persons and, rather than combating stigma, increase and promote it.
20. The two most egregious forms this discrimination takes in the legal and administrative systems are 1) guardianship laws which strip persons with psycho-social disabilities and intellectual disabilities of their legal capacity, making them non-persons before

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<sup>3</sup> CPT's report on its visit from 16 to 22 December 2003, published on 24 June 2004; and CPT's report on its visit from 10 to 21 September 2006, published on 28 February 2008

the law and 2) segregation of persons with psycho-social disabilities and intellectual disabilities in institutions.

21. There is no publically available information about numbers of persons under partial and plenary guardianship. Although the Bulgarian legal system recognizes two forms of guardianship - plenary and partial - the distinction is a very formal one<sup>4</sup> and under both types of guardianship persons with mental disabilities are stripped of numerous rights. People under either type of guardianship are legally prohibited from independently signing employment, marriage, property, social services, healthcare, education services and bank contracts (they thus cannot enjoy a number of Covenant rights, such as those included in Articles 2, 9, 10, 12, 16, 17 or 23). Although persons under partial guardianship by law are supposed to be consulted and give consent to the actions of their guardians, in practice, guardians often make decisions without the consent - and often without even the knowledge - of the person concerned. MDAC represents the applicant in the case of *Stanev v. Bulgaria*, pending before the European Court of Human Rights and in other similar pending cases that challenge placement of persons with mental disabilities in institutions by guardians without their consent.
22. Under both types of guardianship, persons placed under guardianship cannot independently access a court to seek a review of the need for their legal capacity to be restricted and there are no automatic judicial reviews at regular intervals. Such a review may be sought by the guardian for a person under plenary guardianship or by the person under guardianship with the consent of the guardian for a person under partial guardianship; by the guardianship authority; by a prosecutor at the prosecutor's discretion; or by a family member. This situation not only discriminates against persons with disabilities, but also interferes with their rights guaranteed by Article 14 and 16 of the Covenant.
23. Once a decision to deprive a person of legal capacity is taken by a judge, the case is transferred to the guardianship authority of the municipality in which the person resides and it is up to the guardianship authority to appoint a guardian and to appoint a deputy guardian who can act in case of a conflict between the guardian and the person under guardianship. There is almost no oversight of the system and it is common for persons deprived of their legal capacity to not have a guardian appointed for months or years, meaning that no one can take legal actions on their behalf. Further, it is very common for directors or other staff of specialized institutions to be appointed as guardians for residents despite the clear conflict this practice presents, since it prevents the person under guardianship from taking any legal action to terminate his or her residence or to seek a remedy for any violations of his rights in the institution, including abuse and mistreatment. Bulgarian law defines conflict of interest between a guardian and the person under guardianship in very limited terms and leaves it up to the guardianship authority that appointed the guardian to recognize a conflict of interest.

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<sup>4</sup> Persons under partial guardianship have the same rights as an adolescent between the ages of 14 and 18, while persons under plenary guardianship are treated like children under 14 (Persons and Family Act, Art.5)

24. The Committee has already expressed its concerns, with respect to Russia and with regard to Articles 9 and 10 of the Covenant, about the fact that persons deprived of legal capacity have no legal recourse to challenge other violations of their rights, including ill-treatment or abuse by guardians and/or staff of institutions they are confined to, which is aggravated by the lack of an independent inspection mechanism regarding mental health institutions.<sup>5</sup>
25. Persons deprived of their legal capacity are also automatically denied of their right to vote and to be elected guaranteed under Article 25 of the Covenant. This issue has been dealt with by the European Court of Human Rights in the case of *Alajos Kiss v. Hungary*<sup>6</sup>. The Court concluded that the automatic restrictions on voting based on restrictions of legal capacity amounted to a violation of the right to vote of a person with mental disability. Similarly, the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, emphasised that persons with disabilities, including those deprived of their legal capacity, must have equal rights. He stated that States need to “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others... including the right... to vote and be elected”.<sup>7</sup>
26. **We call the Committee’s attention to the government’s failure to provide the relevant information and urge the Committee to remind the government that failure to keep and provide these data hinders its monitoring of any progress made.**
27. **The Bulgarian government must ensure that persons with intellectual and psycho-social disabilities are able to exercise their right to an effective remedy against violations of their rights, including the right not to be discriminated against.**
28. **We ask the Committee to urge the government to pursue a major legal reform in order to bring the Bulgarian legal framework concerning the issues of legal capacity and guardianship in conformity with their international obligations and international human rights standards.**

### C. Additional information related to paragraph 16 of the List of Issues

29. The Committee requested that the government provide information on measures taken to improve living conditions of children in alternative care institutions. The government’s response refers to its 15-year plan to close all children’s institutions. While we welcome the government’s adoption of a detailed plan with target dates and numbers to move all children out of institutional care over the next 15 years, we call the attention of the Committee to the fact that **institutionalisation in itself violates the human rights of children** under numerous international treaties to which Bulgaria is a party. Institutionalisation has a significant impact on a number of rights of children guaranteed under the Covenant, such as the right to liberty and security of person

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<sup>5</sup> Concluding observations of the Human Rights Committee with regard to the Russian Federation, CCPR/C/RUS/CO/6, 29 October 2009

<sup>6</sup> *Alajos Kiss v. Hungary*, no. 38832/06, 20 May 2010

<sup>7</sup> Thomas Hammarberg, “Persons with disabilities must not be denied the right to vote”, 2011, available at [http://commissioner.cws.coe.int/tiki-view\\_blog\\_post.php?postId=127](http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=127)

(Article 9), respect for the inherent dignity of the human person (Article 10), freedom from torture or cruel, inhuman or degrading treatment (Article 7), right to liberty of movement and freedom to choose one's residence (Article 12), freedom from interference with one's privacy, family, home or correspondence (Article 17) and freedom from discrimination (Articles 2 and 26). Segregating children with disabilities in institutions, like segregating them in schools, is a form of discrimination that increases stigma against these children and limits their opportunities. The UN Special Rapporteur on the Right to Education, Mr. Vernon Muñoz, emphasised in his 2007 report for the Human Rights Council that the practice of separating students with disabilities can lead to greater marginalisation from society and entrench discrimination.<sup>8</sup>

30. Institutionalisation

31. We emphasise that segregation in institutions violates all of these rights. Further, numerous studies have shown the irreversible, damaging effects of institutionalisation on children.<sup>9</sup> Therefore, maintaining a system of institutional care for children for another 15 years means that the rights of thousands more Bulgarian children will be violated and that another generation of children will be lost to society through the effects of institutionalisation. The de-institutionalisation plan envisages building small group homes for the children who cannot be reintegrated in their biological families and will not be adopted. The main State funding is focused on building of these homes. Less is envisaged for training of the staff and building a functioning network of service providers, schools and hospitals to contribute best to the well-being of these children. While it is positive that foster care and packages of community-based services and payments to support the poor families would be stimulated by the plan, it still does not contain all of the safeguards needed to make all these measures sustainable. The plan enlists all measures and funding only for the period 2010-2012 and does not refer much to any further periods with concrete steps and measures.
32. According to the State Agency for Child Protection in 2010 there were 24 **institutions for children with intellectual disabilities** (age three to 18) where 1,376 children and young adults were placed. Of them 420 are over 18. Of the 956 children under 18 in such institutions, 879 have intellectual disabilities and many have additional physical or other disabilities according to the Social Assistance Agency.
33. According to the Social Assistance Agency **the institutions for children up to three years old** (where children with and without disabilities are placed) hosted 2,334 children. According to the State Agency for Child Protection 1,074 of these children had some type of disability (the agency does not specify what type).<sup>10</sup>
34. According to the State Agency for Child Protection, as of 31 December 2009 there were 3,852 placed in the **institutions for children, deprived of parental care aged**

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<sup>8</sup> Vernor Muñoz, "The right to education of persons with disabilities, Report of the Special Rapporteur on the right to education, 2007, A/HRC/4/29, paragraph 11

<sup>9</sup> Bulgarian Helsinki Committee, "The forsaken children", 20 September 2010, available at <http://forsakenchildren.bg/helsinki.org/en/>;

<sup>10</sup> *Vision for Deinstitutionalisation of people with Intellectual Disabilities, mental Health Problems and Dementia 2010-2011*, p. 22, <http://www.mlsp.government.bg/bg/docs/indexstr.htm>

- seven to 18, of whom 1,000 had some type of disability.<sup>11</sup> According to the Social Assistance Agency in the institutions for children, deprived of parental care aged seven to 18 (where again children with and without disabilities are placed), as of 31 December 2009, 3,440 children were accommodated out of whom 505 have intellectual disabilities and 213 have mental and neurological problems.<sup>12</sup>
35. Based on this information the total number of children with disabilities placed in institutions is between 2,500 and 3,000.
36. **Institutionalisation has a grave impact on the children, it is itself contrary to human rights of children in institutions and the government must urgently proceed with the plan to close all children’s institutions. It must adopt a concrete and sufficiently clear time-table, specifying in detail individual steps and measures which need to be taken and how they will be funded to create and maintain a sustainable system of community care.**
37. Education of children in institutions
38. The Committee reiterated, in its General Comment no. 18 on Non-discrimination, that while Article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, Article 26 does not specify such limitations. The latter article provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. Article 26 does not merely duplicate the guarantee already provided for in Article 2 but provides in itself an autonomous right.<sup>13</sup> This is especially relevant for children with disabilities who are being discriminated against in the enjoyment of their right to education.
39. In paragraph 95 of the Reply to the List of Issues, the government mentions its concern about the integration of children in mainstream schools. It stated that “only children with severe and multiple disabilities are enrolled in special schools” and continued that 43 special schools had been closed over the last three years. However, we call the attention of the Committee to the fact that, in reality, children with disabilities are being denied the right to education on an equal basis with others, contrary to the

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<sup>11</sup> *Idem*, p. 30

<sup>12</sup> The institutions for children with disabilities (aged three to 18) were subordinated to the Ministry of Labour and Social Policy until 2003 (currently they are run by the municipalities) and children who were placed there were diagnosed with severe intellectual disabilities or multiple disabilities. They were denied access to any form of education and lived in these institutions from the age of three until the age of 18 when they were moved to social care institutions for adults with intellectual disabilities. Before the age of three they used to live in the institutions for children (aged up to three) that are subordinated to the Ministry of Healthcare. There the disabled children were placed usually after birth when they had a disability. After the age of three, if they were diagnosed with severe intellectual or multiple disabilities, they were moved to the institutions for children with disabilities (aged three to 18). Out of the children, aged up to three, those who did not have a disability or whose disability was light were moved to institutions for children without disabilities (aged four to 18) where they were provided access to special or mainstream education. These institutions used to be subordinated to the Ministry of Education until 2007. Currently the municipalities run them.

<sup>13</sup> Human Rights Committee, “General Comment no. 18: Non-discrimination”, paragraph 12, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument)

inclusive education paradigm as it has been emphasized by the UN Special Rapporteur on the Right to Education.<sup>14</sup> In 2009 a research project was initiated by the Commission for Protection Against Discrimination (CPAD) and carried out by a sociological agency (MBMD) to explore the prejudices in the preparatory and primary education system on the grounds of, *inter alia*, disability.<sup>15</sup> CPAD reported that there existed discrimination against children with intellectual disabilities, as the enrolment procedure was outdated and not precise. The teaching programmes needed to be updated and there was no health care provided for these children at schools. CPAD specifically pointed out that the Ministry of Education did not keep a database of the children with special educational needs which makes it difficult to estimate the share of children with disabilities who are ensured access to education at all.<sup>16</sup>

40. **We urge the Committee to remind the Bulgarian government that detention and segregation of children with disabilities, together with their ill-treatment in the institutions, make it impossible to enjoy their right to education. As the only children who are placed in institutions are children with actual or perceived disabilities, this situation constitutes discrimination on the ground of their disability.**
41. Deaths and abuses of children in institutions
42. The majority of children in institutions live in degrading conditions and suffer great violations and abuses. Some of them have died from systematic malnourishment, general physical deterioration, bad hygiene, freezing to death, drowning, suffocation, pneumonia, and violence. In these cases, some of the children were not hospitalized and other were hospitalized too late. There is no doubt that all these elements have caused **severe pain and suffering of children, and amounted to torture, cruel, inhuman or degrading treatment and breached the right to life** of a number of children in Bulgaria (in view of Articles 6 and 7 of the Covenant). The situation of children with disabilities in institutions have been recognized by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, who expressed his concerns about the ongoing ill-treatment of persons, including children, with disabilities in institutions.<sup>17</sup> We reiterate, in this respect, that the absolute prohibition of torture is incorporated in several international treaties, including the Covenant, to which Bulgaria is a party.<sup>18</sup>
43. A 2010 joint inspection of the BHC and the Regional Prosecutor's Office of 24 institutions for children with disabilities proved that health care services in children

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<sup>14</sup> Vernor Muñoz, "The right to education of persons with disabilities", Report of the Special Rapporteur on the right to education, 2007, A/HRC/4/29, paragraph 11

<sup>15</sup> 2009 Annual Report of the Activities of the Protection Against Discrimination Commission, Sofia, 2010, p. 40, available in Bulgarian at:

[http://kzd-nondiscrimination.com/start/index?option=com\\_content&task=blogsection&id=5&Itemid=9](http://kzd-nondiscrimination.com/start/index?option=com_content&task=blogsection&id=5&Itemid=9)

<sup>16</sup> Idem, p. 26

<sup>17</sup> For example, Manfred Nowak, "Interim report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, 2008, A/63/175, section III

<sup>18</sup> Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment – ratified by Bulgaria in 1986; Convention on the Rights of the Child – ratified by Bulgaria in 1991; similarly, this obligation is also enshrined in the Convention on the Rights of Persons with Disabilities, which Bulgaria signed in 2007

institutions are extremely insufficient and lead to numerous death cases and injuries.<sup>19</sup> The monitoring uncovered 238 death cases during the period 2000-2010, the great majority of which were avoidable.<sup>20</sup>

44. Seven cases of sexual abuse were found to have occurred during the period 2000-2010 and at least eight cases of physical violence. Despite the Prosecutor's inspection visit, the abuses and ill-treatment continues.<sup>21</sup> Children are also submitted to harmful and unnecessary treatments. More than eight institutions maintain a practice of unlawful physical immobilization of children as means to control their behaviour. Dangerous drugs have been administered to 167 residents. Some of the children have been subjected to long-term excessive drug treatments.<sup>22</sup>
45. **We can, therefore, conclude that despite the absolute prohibition of torture set by the Covenant and other international instruments, the government has failed to provide children in institutions with adequate living conditions; to create necessary mechanisms to prevent the ongoing ill-treatment and other violations of the children's rights; to investigate, prosecute and punish State officials or non-State officials and private actors. It has thus not provided children with disabilities with the same rights and fundamental freedoms as other children. We ask the Committee to urge the Bulgarian government to take urgent measures to protect the rights of children of all children and to ensure that violations of their rights to not go unpunished.**

#### D. Additional information related to paragraph 17 of the List of Issues

46. The Committee asked the government in paragraph 17 of the List of Issues for details of measures to **improve the living conditions in institutions for persons with disabilities, in particular regarding support to enable those with mental disabilities to live in the community** with other persons. As mentioned above, MDAC and BHC welcome the government's statement in paragraph 98 of its Response to the List of Issues that it is willing to accede to the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol when all the necessary requirements are fulfilled. However, it is very unclear what the government means by "when all the necessary requirements are fulfilled". The government has not proposed any significant amendments to laws to bring them into compliance with the CRPD and has not undertaken any type of significant compliance review.<sup>23</sup> Bulgaria must ratify the CRPD and its Optional

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<sup>19</sup> Bulgarian Helsinki Committee, "The forsaken children", 20 September 2010, available at <http://forsakenchildren.bghelsinki.org/en/>

<sup>20</sup> Idem

<sup>21</sup> BHC received information about a foreign national who decided to adopt two boys with Down syndrome from an institution in Bulgaria. She was just about to have her documents finally approved by the Bulgarian Ministry of Justice when she received a call that one of the boys had died. The boy was five and his weight was 15 lbs. He could just barely sit and could not feed himself. He was fed by a bottle which he could not hold. As the boy died in 2011, after the visit of the Regional Prosecutor Office, it is clear that the situation for some children in institutions is still life-threatening.

<sup>22</sup> Bulgarian Helsinki Committee, "The forsaken children", 20 September 2010, available at <http://forsakenchildren.bghelsinki.org/en/>

<sup>23</sup> According to the available information, there are thematic working groups within the Ministry of Labour and Social Policy to review Bulgaria's compliance with the CRPD, and there exists an Action Plan for the assessment of the readiness of Bulgaria to ratify the Convention. However, several NGOs have opposed these actions because they find them ineffective.

Protocol as a matter of urgent priority so that its stated intentions to guarantee the protection of the rights of persons with disabilities become binding law. We note that the CRPD provides the States with the option of “progressive realization” of several rights guaranteed by it. Therefore, it is not indispensable for a State to fully comply with the CRPD at the moment of ratification and, in view of the CRPD, States are given time to implement some of the articles (especially in the context of economic, social and cultural rights). Also, we note that the European Union have already acceded to the CRPD. Prompt ratification of the CRPD by Bulgaria would prevent further conflicts of its legislation with the EU law.

47. Regarding the Committee’s request for information on measures to improve the living conditions of persons with disabilities in institutions, in particular regarding support to enable those with intellectual disabilities to live in the community, the government refers to a draft national strategy for De-institutionalisation of People with Intellectual Disabilities, Mental Health Problems and Dementia.<sup>24</sup> The government also refers to a plan for closure of 14 specialized institutions. While the government may have plans for future de-institutionalisation, there is no accountability mechanism for such plans. If the government is serious about moving persons with psycho-social disabilities and persons with intellectual disabilities out of institutions and into the community, it must not only develop the housing and services necessary to accommodate the thousands of people currently living in institutions, but it must pass laws to ensure that people with disabilities have an enforceable right to live in the community with choices equal to others as guaranteed by Article 19 of the CRPD.
48. The overuse of institutional care in Bulgaria is closely linked to the continued practice of depriving persons with intellectual or psycho-social disabilities of their legal capacity and of placing them under guardianship (in its 2009 report, BHC estimated that 80% of persons in the institutions it monitored were fully or partially deprived of legal capacity). These people are automatically deprived of many of their other rights, including the right to choose their place of residence. Guardians, who are often employees of the same municipalities that run the institutions or of the institutions themselves, have complete power to place persons deprived of legal capacity in institutions for life with no review by a court and no administrative appeal. It follows that the government must simultaneously deal with deinstitutionalisation as well as with the legal capacity of persons with disabilities. It must pursue a vast law reform tackling both of these issues at the same time.
49. Data on the number of persons with intellectual disabilities and psycho-social disabilities living in protected homes (small group homes where six to ten residents pay fees and receive accommodation, food, and some occupation) with services provided using government assistance rather than in institutions demonstrate that as yet the government has failed to make a real commitment to move from an institutional to a community-based care model.

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<sup>24</sup> *Vision for Deinstitutionalisation of people with Intellectual Disabilities, mental Health Problems and Dementia 2010-2011*, <http://www.mlsp.government.bg/bg/docs/indexstr.htm>

50. According to the Social Support Agency data, at the end of 2010, in Bulgaria there were a total of **3,498** institutionalised adults.<sup>25</sup> In its 2009 report on human rights in Bulgaria, the BHC reported that at the end of 2009, there were 43 specialized institutions for adults with intellectual and psycho-social disabilities (not including specialized institutions for persons with dementia). Of these, 15 were institutions for adults with psycho-social disabilities, with a total capacity of 1,266; the other 28 were institutions for persons with intellectual disabilities, with a total capacity of 2,476.<sup>26</sup> Although institutions in Bulgaria are categorized by type of mental disability, in practice people with intellectual disabilities and people with psycho-social disabilities are mixed in many institutions. On the other hand, persons in such institutions are segregated by sex, with separate institutions for men and women.<sup>27</sup>
51. The housing and services currently available for persons with psycho-social disabilities and persons with intellectual disabilities in the community are completely inadequate to meet the need.
52. The Social Assistance Agency referred to the existence of about five protected homes with total capacity of 44 persons with psycho-social disabilities and 46 protected homes with total capacity of 391 persons with intellectual disabilities in which, as of 30 November 2008, 133 persons were accommodated.<sup>28</sup>
53. Bulgaria's draft plan for Deinstitutionalisation of People with Intellectual Disabilities, Mental Health problems and Dementia 2010-2011 mentions that 4,400 people with intellectual and psycho-social disabilities living in institutions should be deinstitutionalized and provided with small group home accommodation and day-care services.<sup>29</sup>
54. The total number of persons with disabilities deinstitutionalised with the help of social assistant for 2006 and 2007 is 28<sup>30</sup> and in 2008 only 19 assistants were appointed

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<sup>25</sup> Social Support Agency, "List of Specialised Institutions", SSA Official Home Page available at [http://www.asp.government.bg/ASP\\_Client/ClientServlet?cmd=add\\_content&lng=1&sectid=24&s1=22&selid=22](http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&s1=22&selid=22) (20 April 2011).

<sup>26</sup> BHC 2009 Annual report, p.40 available in English at: [http://www.bghelsinki.org/index.php?module=resources&lg=en&cat\\_id=24](http://www.bghelsinki.org/index.php?module=resources&lg=en&cat_id=24)

<sup>27</sup> Segregating men and women by sex severely restricts any opportunity for those in institutions, who rarely come into contact with people outside the institutions, to form relationships with members of the opposite sex, to marry and to have children.

<sup>28</sup> *Needs Assessment of the Structures, Involved in the Process of Deinstitutionalisation of the Care for Persons with Severe Mental Diseases and Mental Disabilities*, Monitoring report, August-2008-August 2009, Bulgarian Helsinki Committee, Bulgarian Institute for Personal Relations, Sofia, p. 9. Available in Bulgarian at: [http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=0&cat\\_id=19#2009](http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=0&cat_id=19#2009)

<sup>29</sup> *Vision for Deinstitutionalisation of people with Intellectual Disabilities, mental Health Problems and Dementia 2010-2011*, p. 5 and p. 7, <http://www.mlsp.government.bg/bg/docs/indexstr.htm>

<sup>30</sup> National Financial Audit Office, 2008 Report about the results of an audit of the activities under the National Program, Assistants for Persons with Disabilities in the Ministry of Labour and Social policy, Social Assistance Agency and Employment Agency for the period 1.01.2005-31.12.2007, Sofia, p.10, available at [http://www.bulnao.government.bg/files/\\_bg/DOK\\_41\\_HPAXU\\_sled\\_zased.doc](http://www.bulnao.government.bg/files/_bg/DOK_41_HPAXU_sled_zased.doc)

for such deinstitutionalised persons.<sup>31</sup> In 2009, 20 assistants were appointed to deinstitutionalized adults with disabilities.<sup>32</sup>

55. In 2007, the BHC, together with the Open Society Institute Mental Health Initiative, carried out a monitoring of the community-based services developed for persons with mental disabilities: 19 day centres for children and adults were visited, as well as 17 protected homes and two rehabilitation and social integration centres.<sup>33</sup> The monitoring found that they do not provide a real alternative to the institutional care; as a concept, they do not lead to effective deinstitutionalisation, do not meet the individual needs of the clients and cannot provide quality care. This is so because social, rehabilitation and educational services are being developed without preliminary needs assessment, without understanding of the desired result, without the involvement of the local authorities that often are the managers of such programs, without respect to the opinions of the clients and without skilled staff. The number of services is insufficient and they are available to a very small number of people with mental disabilities, while increasing costs, as new and modern buildings are often built for their development, which local authorities later find impossible to maintain. The staff is not more skilled than those in the institutions and also demonstrates a discriminatory attitude to the clients.<sup>34</sup>
56. **The government must amend its legislation and policy of depriving persons with intellectual disabilities and psycho-social disabilities of their legal capacity as well as the system of guardianship.**
57. **It must ensure that all persons deprived of their legal capacity have access to an effective judicial review of the decisions depriving them of their legal capacity, as well as the decisions on their institutionalization.**
58. **We urge the Committee to ask the government to take appropriate measures to prevent all forms of ill-treatment in institutions.**
59. **The government must publish a clear list of relevant time-tabled actions as regards the planned deinstitutionalisation of persons with intellectual and psycho-social disabilities and urgently close the institutions.**
60. **We ask the Committee to recommend to the government to include people with disabilities in the review of the country's compliance with the CRPD and the ensuing ratification process (as envisaged also by Article 4 (3) of the CRPD).**

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<sup>31</sup> 2008 Annual Report of the Activities of the Social Assistance Agency, Sofia, p. 8, available in Bulgarian at : [http://www.asp.government.bg/ASP\\_Files/OT4ET\\_ASP\\_2008.doc](http://www.asp.government.bg/ASP_Files/OT4ET_ASP_2008.doc)

<sup>32</sup> 2009 Annual Report of the Activities of the Social Assistance Agency, Sofia, p. 22, available in Bulgarian at : [http://www.asp.government.bg/ASP\\_Files/OT4ET\\_ASP\\_2008.doc](http://www.asp.government.bg/ASP_Files/OT4ET_ASP_2008.doc)

<sup>33</sup> 2007 Annual Report, Human Rights in Bulgaria, Bulgarian Helsinki Committee, April 2008, p.46, available in English at [http://www.bghelsinki.org/index.php?module=resources&lq=en&cat\\_id=24](http://www.bghelsinki.org/index.php?module=resources&lq=en&cat_id=24) (last accessed 24.05.2011)

<sup>34</sup> Idem